Supreme Court, U.S.
FILED
99 798 NOV 8 - 1999
OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

PRISCILLA M. LIPPINCOTT ADAMS
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Peter Goldberger
(*Counsel of Record*)
James H. Feldman, Jr.
50 Rittenhouse Place
Ardmore, PA 19003-2276
(610) 649-8200

John W. Whitehead
Steven H. Aden
THE RUTHERFORD INSTITUTE
1445 East Rio Road
Charlottesville, VA 22906
(804) 978-3888

Thomas Stephen Neuberger
200 West 9th Street, Ste 702
Wilmington, DE 19801
(302) 655-0582

November 8, 1999

9988

QUESTIONS PRESENTED FOR REVIEW

1. Under the Religious Freedom Restoration Act, 42 U.S.C. §2000bb et seq., may the Internal Revenue Service refuse to waive civil penalties that substantially burden a taxpayer's exercise of religion without presenting any evidence that it cannot further the compelling governmental interest in revenue collection by any means that are less restrictive of the taxpayer's religious liberty, as the statute expressly requires?

2. The Internal Revenue Code grants discretion to the Internal Revenue Service to waive civil penalties for late filing and for failure to pay toward estimated tax liability, applying standards of "reasonable cause" and "unusual circumstances." 26 U.S.C. §§6651(a), 6654(e). Under the Free Exercise Clause of the First Amendment, as interpreted in Sherbert v. Verner, 374 U.S. 398 (1963), and Employment Division v. Smith, 494 U.S. 872 (1990), may the IRS categorically deny such waivers to persons whose sincerely held religious convictions prevent them from complying voluntarily with the income tax system?

LIST OF ALL PARTIES

The caption of the case in this Court contains the names of all parties (petitioner Adams and the Commissioner of Internal Revenue). An unrelated case presenting similar questions was recently filed in this Court as Browne et ux. v. United States, No. 99-632.

TABLE OF CONTENTS

QUESTIONS PRESENTED. ii

LIST OF ALL PARTIES. iii

OPINIONS BELOW. 1

JURISDICTION. 2

TEXT OF CONSTITUTIONAL PROVISION, FEDERAL STATUTES AND REGULATION INVOLVED. 2

STATEMENT OF THE CASE. 4

a. The Course of Proceedings 5

b. Statement of Facts. 6

c. Statement of Lower Court Jurisdiction 8

REASONS FOR GRANTING THE WRIT

1. Disregarding the Religious Freedom Restoration Act's plain language requiring that all federal agencies "demonstrate" that any infringement on religious exercise constitutes the "least restrictive means" of furthering a "compelling governmental interest," the decisions below have effectively exempted the

Internal Revenue Service from compliance with RFRA in its decisions whether to waive discretionary penalties. 9

2. The lower courts defied this Court's binding precedent under the Free Exercise Clause when they permitted a government agency to discriminate against religious reasons, as compared with other equivalent reasons for noncompliance, in determining whether to exercise its statutory power to waive particular civil penalties. 21

CONCLUSION 29

INDEX TO APPENDIX

A. Opinion of the Third Circuit, 170 F.3d 173 (1999). . . A1

B. Opinion of the Tax Court, 110 Tax Ct. 137 (1998). . .A23

C. Stipulations of Fact in United States Tax Court (incorporated by reference into Tax Court's opinion). . . . A28

D. Decisions of the Tax Court. A50

E. Order of the Third Circuit denying rehearing (June 10, 1999). A53

F. Pertinent provisions of:

-- the Internal Revenue Code. A55
-- the Treasury Regulations. A56
-- the Internal Revenue Manual. A57

TABLE OF AUTHORITIES

CASES

Adams v. Commissioner, 170 F.3d 173
(3d Cir. 1999). 1, 5, 10, 16, 17, 19, 21, 29

Bowen v. Roy, 476 U.S. 693 (1986). 21,22

Browne v. United States, 176 F.3d 25 (2d Cir. 1999),
pet. for cert. filed, No. 99-632 (filed Oct. 12, 1999) 20

Callahan v. Woods, 658 F.2d 679 (9th Cir. 1981) 27

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,
508 U.S. 520 (1993) 12, 23

City of Boerne v. Flores, 521 U.S. 507 (1997). 13

Commissioner v. Acker, 361 U.S. 87 (1959). 26

Ehlert v. United States, 402 U.S. 99 (1971). 26

Employment Division v. Smith,
494 U.S. 872 (1990). . . . . *passim*

Frazee v. Illinois Dept. of Employment Security,
489 U.S. 829 (1989) 22

Goldman v. Weinberger, 475 U.S. 503 (1986) 18

Hamilton v. Board of Regents, 293 U.S. 245 (1934) 13

Hernandez v. Commissioner, 490 U.S. 680 (1989) 14

Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136 (1987) 22

Hughes Aircraft Co. v. Jacobson, 525 U.S. 432 (1999). . . .17

In re Young (Christians v. Crystal Evangelical Free Church), 141 F.3d 854 (8th Cir. 1998). 11

Ivan Allen Co. v. United States, 422 U.S. 617 (1975). 26

O'Lone v. Shabazz, 482 U.S. 342 (1987). 18

Sherbert v. Verner, 374 U.S. 398 (1963). . . . i, 13, 21-23, 28

Thomas v. Review Board, 450 U.S. 707 (1981). 22

United States v. Ballard, 322 U.S. 78 (1944). 27

United States v. Bauer, 84 F.3d 1549 (9th Cir. 1996). .11, 13

United States v. Boyle, 469 U.S. 241 (1985). 24

United States v. Jenkins, 420 U.S. 358 (1975) 26

United States v. Lee, 455 U.S. 252 (1982) . . . . . *passim*

Wisconsin v. Yoder, 406 U.S. 205 (1972) 13

CONSTITUTION, STATUTES, REGULATIONS, AND RULES

U.S. Const., amend. I (Establishment Clause) 27

U.S. Const., amend. I (Free Exercise Cl.). . . . . *passim*

26 U.S.C. §1402(g) 18

26 U.S.C. §3127 18

26 U.S.C. §6213-6214 and 7442 8

26 U.S.C. §6651(a) . . . . . *passim*

26 U.S.C. §66545. . . . . *passim*

26 U.S.C. §7482(a) 9

28 U.S.C. §1254(1) 2

28 U.S.C. §2101(c) 2

42 U.S.C. §2000bb-1 3,10

42 U.S.C. §2000bb-2(1) 18

42 U.S.C. §2000bb-2(3) 9, 14, 18, 19

42 U.S.C. §2000bb-2(4) 12

42 U.S.C. §2000bb-3(a) 19

Pub.L. 100-647, 8007 (Oct. 22, 1988). 18

Religious Freedom Restoration Act . . . . . *passim*

26 C.F.R. §301.6651-1(c)(1) 23, 26

S.Ct. Rule 13.1, 13.3, 30.1 1

S.Ct. Rule 14.1(i) 8

MISCELLANEOUS

Bickel, Alexander M. *The Morality of Consent* 99(1975). . 28

H.Rep. 103-88, 103d Cong., 1st Sess. (1993) 17, 18

IRM 1218 (Policies of the Internal Revenue Service Handbook), Policy Statement P-2-7 . . . . . 25, 26

IRM 120.1.1.1.4 25

IRM 120.1.1.3.1 25

IRM 120.1.1.3.1.1 25

IRM 120.1.1.3.1.2.4 25

IRM 5172.11 26

IRM 5172.12 . . . . . 25, 26

Kornhauser, Marjorie E., *For God and Country: Taxing Conscience*, 5 Wisc. Law Rev. (Dec. 1999) 12

Noonan, John T., The Lustre of Our Country: The American Experience of Religious Freedom (U.Calif. Press 1998) . . .11

Religious Freedom Tax Fund Bill, H.R. 2660, 105th Cong. 12

S.Rep. 103-111, 103d Cong., 1st Sess. (1993) 17, 18

No.

IN THE
SUPREME COURT OF THE UNITED STATES

PRISCILLA M. LIPPINCOTT ADAMS
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PRISCILLA M. LIPPINCOTT ADAMS respectfully petitions this Court for a writ of certiorari to review the order of the United States Court of Appeals for the Third Circuit filed on March 4, 1999, denying her appeal from a decision of the United States Tax Court.

OPINIONS BELOW

The opinion of the court of appeals (Rendell, J., with Greenberg, J., & Debevoise, U.S.D.J.) is published at 170 F.3d 173. A copy is attached at Appendix A1-A22. The Opinion of the United States Tax Court is published at 110 Tax Ct. 137, Tax Ct. Rep. (CCH) ¶52,602 (1998); a copy is attached at

Appendix A23-A27.[1]

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit affirming the Decisions of the United States Tax Court was filed and entered on March 4, 1999. A timely petition for rehearing was denied by Order dated June 10, 1999. App. A53-A54. On August 27, 1999, under No. A-174, Justice Souter extended the time for filing this petition to and including November 7, 1999. This petition is timely filed on or before the first business day following that date. Rules 13.1, 13.3, 30.1; 28 U.S.C. § 2101(c). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

TEXT OF CONSTITUTIONAL PROVISION, FEDERAL STATUTESAND REGULATION INVOLVED

The First Amendment to the Constitution of the United States provides, in pertinent part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...."

The Religious Freedom Restoration Act provides in pertinent part:

> (a) **In general.** Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in

---

1. The parties' stipulations for trial in the Tax Court, incorporated into the opinion as the court's findings of fact, are attached as Appendix A28-49.

subsection (b).

(b) **Exception.** Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person --

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) **Judicial relief.** A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government....

42 U.S.C. §2000bb-1.

§2000bb-2. **Definitions**

As used in this Act--

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State;

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means the exercise of religion under the First Amendment to the Constitution.

42 U.S.C. §2000bb-2.

§2000bb-3. **Applicability**

(a) **In general.** This Act applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act [enacted Nov. 16, 1993].

* * * *

42 U.S.C. §2000bb-3.

Because of their length, the pertinent provisions of the Internal Revenue Code and Treasury Regulations are reprinted in the Appendix, along with relevant implementing portions of the Internal Revenue Manual. Appendix at A55-60.

STATEMENT OF THE CASE

Petitioner Priscilla M. Lippincott Adams is a Quaker pacifist whose religious beliefs prevent her from voluntarily paying any tax, such as the federal income tax, which is used in substantial part to fund war preparation and warmaking activities. She petitioned the Tax Court to challenge civil penalties imposed on her by the Internal Revenue Service on account of her late filing of income tax returns, and on account of her failure to make quarterly estimated payments of tax expected to be due, which resulted from obedience to the demands of her religious conscience. She claimed that both the Religious Freedom Restoration Act, 42 U.S.C. §2000bb et seq. ("RFRA"), and the Internal Revenue Code exempted her, inter alia, from being required to pay additional sums as penalties on account of having exercised her religion.

At trial before the Tax Court, and then on appeal, petitioner argued that the IRS' refusal to waive the penalties discriminated against religiously-based showings of "reasonable

cause," in violation of both RFRA and the First Amendment's Free Exercise Clause. Both the Tax Court and the Third Circuit, in precedent-setting opinions, rejected her claims.

a. The Course of Proceedings

In July 1996 and February 1997, petitioner filed petitions with the United States Tax Court for a redetermination of Notices of Deficiency in income tax and attendant penalties relating to the tax years 1988, 1989, 1992, 1993, and 1994. The Tax Court consolidated the cases for trial and disposition. Exhibits and a stipulation of facts (App. A28-49) were presented to the Hon. Maurice B. Foley, a Judge of the Tax Court, in open court on October 16, 1997, and the case was submitted as if tried on those fully stipulated facts.[2] Following briefing, the Tax Court filed a for-publication, precedential Opinion, authored by Judge Foley, adopting the stipulated facts but ruling against Ms. Adams. App. A24. The total deficiency in tax for the five years involved is $15,598, while the penalties total $1,539, approximately another 10%. With cumulative interest, of course, the true liability is far higher.

On appeal, the Third Circuit affirmed by published opinion. App. A1. The opinion below affirmed the decisions of the Tax Court that there are deficiencies in Ms. Adams' 1988, 1989, 1992, 1993, and 1994 Federal Income Tax, and that additions to that tax are also due.[3] Rehearing was denied. App.

---

2. As no facts were left in dispute, the case was not so much tried as it was resolved as if on cross motions for summary judgment.

3. The Tax Court upheld additions consisting of penalties for failure to file (IRC § 6651) and for failure to make estimated payments when payments from wage withholding were insufficient to cover the final liability (IRC § 6654). The panel opinion also mentions penalties

A53. This petition follows.

b. Statement of Facts

The parties stipulated to an extensive statement of facts for the trial in Tax Court. Judge Foley expressly found all the stipulated facts to be true. App. A24. Accordingly, the stipulated facts are reprinted in the Appendix to this Petition. App. A28-49. The following statement is a highly abridged version.

Priscilla Lippincott Adams, the petitioner, is a member of the Haddonfield Monthly Meeting of the Religious Society of Friends ("Quakers"). Stip.¶29; see Stip¶52 (local Quaker congregations referred to as "Monthly Meetings"); App. A33, A40. Ms. Adams adheres to the fundamental tenets of Quaker theology, including the belief that there is "that of God" in every person. Stip. ¶34; App. A34. Her Quaker ancestors emigrated to the American colonies in the mid 1600s to escape religious persecution in England, eventually settling in New Jersey. Stip. ¶28; App. A33. Petitioner's faith dictates that she not voluntarily participate, directly or indirectly, in war or other military activities. Stip. ¶35; App. A34.

According to her uncontested testimony, petitioner's deeply held religious beliefs precluded her during the years at issue from filing timely returns or voluntarily paying federal income tax, including estimated taxes. Stip. ¶46; App. A38.[4]

---

for failure to pay (App. A3; 170 F.3d at 174), but the Tax Court did not assess any such penalty. App. A50-51.

4. Prior to 1997, petitioner Adams' religious convictions prevented her from filing timely tax returns, because she believed that her voluntarily filing returns would assist the IRS in collecting taxes by providing it with useful information. Stip ¶44; App. A37. After

Petitioner would voluntarily pay all her federal income taxes, however, if the payments were placed in a fund that supported only non-military spending, for example, or if her payments could be earmarked and directed to accounts in the Treasury assigned to the support of non-military expenditures. Stip. 45; App. A37.

Petitioner is not only a member but also an employee of the Philadelphia Yearly Meeting of the Religious Society of Friends ("PYM"). PYM supports petitioner's witness by refusing to pay over voluntarily to the IRS the percentage of the federal tax amount withheld from petitioner's current pay which PYM calculates to be military-related. The IRS regularly levies a PYM account at a local bank to obtain the amounts withheld from her gross pay but not voluntarily paid over, plus penalties and interest charged against PYM for its noncooperation, and PYM's bank surrenders the funds demanded. Petitioner is fully aware that the amounts of tax withheld from her pay but not voluntarily paid over by PYM can and will be collected from PYM bank accounts without her participation. Stip. 40; App. A36. Because these sums do not ordinarily equal the full amount of tax due from petitioner on an annual basis, the Internal Revenue Code would require petitioner to forward supplementary amounts of "estimated tax" on a quarterly basis.

---

receiving the notices of deficiency and filing her Tax Court petitions, Ms. Adams re-examined the religious basis of her refusal to file. After convening a Quaker clearness committee to help discern God's leading on this question (see Stip. ¶ 37, App. A35 [explaining Quaker "clearness" process]), the committee and petitioner determined that petitioner's practice of not filing returns was no longer required by her leading from God, because her failure to file would no longer impair the IRS's ability to collect her taxes. Stip. ¶ 42(c); App. A37. Thus relieved of the religious impediment, petitioner then filed belated returns for the years in question.

Because her religion precludes her from doing so, respondent also penalizes petitioner under IRC §6654. Because of her failure to file returns, penalties for lateness were added to the unpaid amount.[5]

All taxes collected by the respondent Commissioner are placed in the General Fund of the United States Treasury, a substantial portion of which funds military expenditures. Stip. ¶72; App. A48. Because federal income taxes are used by the government in substantial part to fund the military and military activities, petitioner Adams has never voluntarily paid income taxes. Stip. ¶35; App. A34.

Petitioner has conducted herself so as to ensure that she reaps no personal profit from her religiously-obligatory tax refusal. Any amount which Ms. Adams calculates as due with her return, in addition to taxes withheld from her by her employer, she loans at no interest to organizations which she believes are working to create a better world. She has not required these organizations to repay the loans, but might do so if the IRS collected an equal or greater amount of money from her. Stip. ¶41; App. A36.

c. Statement of Lower Court Jurisdiction Under Rule 14.1(i).

The United States Tax Court had subject matter jurisdiction of this case under 26 U.S.C. §6213-6214 and 7442, in that the petitioner filed petitions with that court for redetermination of alleged deficiencies within 90 days of the

---

5. Petitioner stipulated at trial to the accuracy of the proposed additional penalties for both late payment and late filing, but the Tax Court did not include the nonpayment aspect in its decision, and the Commissioner did not seek reconsideration or cross-appeal. Accordingly, no penalties for failure to pay are at issue in this case.

date the notice of deficiency was mailed to her with respect to each year.[6] The Third Circuit's appellate jurisdiction rested upon 26 U.S.C. §7482(a), governing appeals from final decisions of the United States Tax Court.

REASONS FOR GRANTING THE WRIT

1. Disregarding the Religious Freedom Restoration Act's plain language requiring that all federal agencies "demonstrate" that any infringement on religious exercise constitutes the "least restrictive means" of furthering a "compelling governmental interest," the decisions below have effectively exempted the Internal Revenue Service from compliance with RFRA in its decisions whether to waive discretionary penalties.

The Third Circuit's opinion below upholds a deficiency in income taxes, in addition to certain penalties, resulting from petitioner's exercise of her Quaker religious convictions against voluntarily paying for military activities and war preparation. In defiance of Congressional mandate, the court below dismissed the statutory command that respondent "demonstrate" compliance with the governing legal standard as a merely "rhetorical question." App. A14. Certiorari should be granted

---

6. Respondent mailed notices of deficiency to petitioner for 1988 and 1993 on April 24, 1996; for 1989 and 1992 on April 17, 1996; and for 1994 on November 27, 1996. Stip. 4; App. A29. The petition challenging the alleged 1988, 1989, 1992, and 1993 deficiences (No. 15535-96) was filed July 18, 1996, within 90 days of the earliest of those notices. The petition challenging the alleged 1994 deficiency (No. 3437-97) was filed February 24, 1997.

in order to clarify that neither the Internal Revenue Service nor any other federal agency is entitled to a special exemption from generally-applicable laws of the United States.

Petititioner's case well illustrates how the same religion-based claim can give rise to both a First Amendment Free Exercise argument, as described under Point 2 below, and a statutory RFRA argument. Contrary to the approach taken by the court below, these two types of claims call for distinct lines of analysis and different evidentiary showings by the parties.

The general rule under the Religious Freedom Restoration Act ("RFRA") is a total prohibition on governmental action which "burdens" an individual's "exercise of religion." 42 U.S.C. §2000bb-1(a). The Act then provides an "exception" to that rule where the government can "demonstrate" that the objectionable requirement is nevertheless the "least restrictive means" of accomplishing a "compelling governmental interest." Id. §2000bb-1(b). The term "demonstrates" is defined to mean "meets the burden of going forward with the evidence and of persuasion." 42 U.S.C. §2000bb-2(3) (emphasis added). Congress thus intentionally legislated in RFRA against what the appeals court did in this case – accepting mere argument in lieu of proof of government claims of inability to accommodate religious objections to generally applicable legal obligations. Although respondent presented no evidence in the trial court to show that the IRS could not adapt to any of the accommodations suggested by petitioner, the court of appeals relied on this Court's pre-RFRA constitutional cases, such as United States v. Lee, 455 U.S. 252 (1982), to hold that the statutory test, in the tax context, poses no more than a "rhetorical question." App. A14, 170 F.3d at 179.

Writing for the Ninth Circuit, Judge Noonan aptly summarized some of RFRA's key points:

The statute goes beyond the constitutional language that

> forbids the 'prohibiting' of the free exercise of religion and uses the broader verb 'burden': a government may burden religion only on the terms set out .... If there is a substantial burdening of a person's exercise of religion, the government must meet two tests. [1st] The government must 'demonstrate' that the application of the burden to this particular person furthers 'a compelling governmental interest.' [2d] The government must 'demonstrate' that this application 'is the least restrictive means of furthering that compelling governmental interest.' [Finally, *w*]*hat is meant by 'demonstrate' is explicitly defined in terms of the government's burdens 'of going forward with the evidence and of persuasion.'*

United States v. Bauer, 84 F.3d 1549, 1558 (9th Cir.1996) (emphasis added).[7] See also In re Young (Christians v. Crystal Evangelical Free Church), 141 F.3d 854 (8th Cir. 1998). While refusing to accommodate sincere religious objectors like petitioner may be intended theoretically to serve the compelling governmental interest in tax collection, [8] the respondent offered

---

7. In Bauer, in a portion of the opinion authored by Judge Noonan, the Ninth Circuit reversed the federal criminal convictions of Rastafarian defendants for simple possession of marijuana, called "ganga" and used as a sacrament in their religion. Judge Noonan's comprehensive, scholarly study of the central role of religious freedom in the American constitutional system, The Lustre of Our Country: The American Experience of Religious Freedom, was published in 1998. The first words in Judge Noonan's book refer to the murderous persecution of Quakers for adhering to their beliefs in early New England, and he writes compellingly of those terrible days. Id. at 51-54.

8. In fact, it is difficult to believe that the expense of forcible collection from those who cannot pay voluntarily on account of their

the Tax Court no proof that adding civil penalties to the amount of tax which it eventually collects by levy is the least restrictive means of furthering any compelling interest.

At the core of petitioner Adams' religious belief is the fundamental tenet of Quaker theology that there is "that of God" in every person. Stip. 34; App. A34. This belief leads her to believe that "every person contains the Spirit of God that links all people with each other," and that "it is wrong for anybody to harm, maim, or kill another person." Id.; App. A34. It follows that petitioner Adams' religious faith:

> dictates that she not voluntarily participate, directly or indirectly, in war or other military activities. Because federal income taxes are used by the government in substantial part to fund the military and military activities, she has never voluntarily paid income taxes.

Stip. ¶35; App. A34. Petitioner's nonpayment of income tax is thus a mandated exercise of her religious beliefs, as was her initial failure to file returns. See App. A24 (Tax Court finding).

The beliefs which have led petitioner not to pay federal income tax voluntarily, and which previously led her not to file returns, are indisputably religious in nature. See 42 U.S.C. §2000bb-2(4) ("exercise of religion" under RFRA is same as under Constitution); Church of the Lukumi Babalu Aye, Inc. v.

---

religious pacifism really exceeds the sum ultimately collected. A forthcoming study concludes that the enactment of a specific conscientious objector provision for such individuals would result in a slight revenue increase to the Treasury. Marjorie E. Kornhauser, *For God and Country: Taxing Conscience*, 5 Wisc. Law Rev., TAN 18 (Dec. 1999) ("revenues would increase because many war tax resisters would pay taxes that they currently do not pay"); see Religious Freedom Peace Tax Fund Bill, H.R. 2660, 105th Cong.

City of Hialeah, 508 U.S. 520, 531 (1993) (discussing constitutional meaning of "religion"). Petitioner's refusal to pay taxes which fund military spending has been recognized as an authentic "leading" by a clearness committee of the Haddonfield Monthly Meeting of the Religious Society of Friends. Stip. ¶37 (defining "leading"), ¶42; App. A37, A36. It is a manifestation of what is known among Quakers as the "Peace Testimony." Stip. ¶¶ 47-48, 51, 58, 60, 63-65, 69; App. A38, A40, A43-46. For petitioner to defy this leading would be equivalent to her disobeying God. Stip. ¶54; App. A41.

The Act calls upon federal courts and agencies to apply "the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) ...." 42 U.S.C. §2000bb(b)(1). The Sherbert and Yoder decisions, which RFRA particularly endorses and "incorporat[es]" (Bauer, 84 F.3d at 1558), are among this Court's most sympathetic decisions toward Free Exercise claims. It cannot be accidental that Congress chose those decisions to mention in the RFRA statement of purpose. "Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law." City of Boerne v. Flores, 521 U.S. 507, 534 (1997).

Petitioner has not disputed the established principle that the government has a compelling interest in collecting taxes. Stip. ¶73, App. A48; see United States v. Lee, 455 U.S. at 260; cf. Hamilton v. Board of Regents, 293 U.S. 245, 266 (1934) (Cardozo, Brandeis, & Stone, JJ., concurring). The Tax Court erred under RFRA by defining the government's compelling interest so as to preclude any necessity of proof that it was using the least restrictive means. The Tax Court simply advanced a factually unsupported assertion that there are no alternative means that might accommodate Ms. Adams' religious exercise without fatally undermining the integrity of

the system of federal taxation:

> [T]he Supreme Court has established that uniform, mandatory participation in the Federal income tax system, irrespective of religious belief, is a compelling governmental interest. See [United States v. Lee, 455 U.S. at 260]; Hernandez v. Commissioner, [490 U.S. 680, 699-700 (1989)]. As a result, requiring petitioner's participation in the Federal income tax system is the only, and thus the least restrictive, means of furthering the Government's interest.

App. A26. The effect of this analysis and holding was to exempt the IRS from RFRA entirely, contrary to the plain intent and command of Congress. To define the "compelling governmental interest" as an interest in maintaining "uniform, mandatory participation in the Federal income tax system, irrespective of religious belief," rather than as the interest in tax collection simpliciter, is to put the rabbit in the hat. The Tax Court's formulation cannot resolve the issue presented in this case; it simply attempts to define it away in a manner inconsistent with the structure of RFRA itself. Mere citation to the kind of cases that RFRA was designed to supersede[9] could

---

9. In particular, neither Lee nor Hernandez suggests that the government was required in those cases to demonstrate -- as defined in RFRA, that is, bearing a burden of proving by evidence, 42 U.S.C. §2000bb-2(3) -- the truth of its assertion that the tax system could not survive recognition of religious exceptions. The significance of the Congressional decision to require such proof is vibrantly illustrated by the subsequent history of Lee, as discussed at pp. 17-18 below. Moreover, in the instant case petitioner has never claimed an exemption from "participation in the Federal income tax system," but only a right to be accommodated in the handling and direction of her payments, and not to be subjected to ineffectual but burdensome financial penalties.

not win the day for the respondent in this case.

Before trial, the parties were asked by the Tax Court judge to attempt to stipulate the facts. Respondent's contribution to this process included nothing on the issue of "least restrictive means" or the government's ability to accommodate conscientious objectors to military-related tax payment, and the Tax Court's findings of fact are therefore silent on the subject.[10] In particular, the respondent proposed no facts that might demonstrate that the imposition of civil penalties upon petitioner was the means of achieving the government's compelling interest in tax collection which was least restrictive of her religious liberty. Moreover, the breadth of respondent's discretion to waive these penalties, as expressed in the statute and regulation, as well as in the Internal Revenue Manual (all elaborated under Point 2 below) itself proves that the government can readily accommodate petitioner at least to the extent of refraining from the imposition of pecuniary penalties on her exercise of religion. RFRA insists that if the IRS can accommodate, then it must.

The issue under RFRA in this case, which the courts below failed to address, is whether forcible collection with added penalties is the means of accomplishing the government's objective – timely collection of the lawful tax amount -- which is "least restrictive" of petitioner Adams' religious liberty. Indeed, this cannot be so, since the IRS could set out to collect the overdue tax by levy (as it eventually always does) while

---

10. Even though she bore no burden at all, Ms. Adams also averred (and the government stipulated, and the Tax Court so found) that her religious convictions would not prevent her from accepting any number of possible accommodations, and that she was open to considering anything proposed by the IRS. In rejoinder, respondent submitted nothing factual at all, not even an affidavit of a Treasury official.

exercising its authority to waive the civil penalties.[11] Compusory collection without added financial penalties is necessarily less restrictive of petitioner's free exercise than collection of the larger amount, particularly where the penalties, too, go into the government fund. Yet the IRS totally failed to carry its burden of proof, or even to attempt to do so, in the trial court.[12]

Rather than directly apply the "least restrictive means" test to petitioner's case, as required by RFRA, the court below erroneously ruled that constitutional case law, decided under a different legal standard prior to RFRA's enactment, dictated its ruling. App. A19; 170 F.3d at 180. In this, the court relied on a "body of case law related to war tax protesters," id. at 181 (referring to cases cited id. at 178), none of which applies RFRA or even the standards incorporated there.[13] Under

---

11. The issue of adding interest at the ordinary rate is not presented by this case.

12. RFRA required that respondent prove it had done the most it could to accommodate the petitioner. We have limited this petition, however, to demonstrating that respondent did not even do the least it could to accommodate her, that is, to waive penalties which Congress has independently made waivable for "reasonable cause." Petitioner argued below that respondent could in fact do much more, and that respondent failed to prove otherwise. For example, the need to collect forcibly at all, and thus the added cost to the government, could also be avoided if respondent would offer petitioner any form of accommodation with respect to the application of her payments, akin to how it handles taxpayers who check off that they want $3 to go to the Presidential Election Campaign Fund.

13. The only other reason given by the court below for its adverse decision was the observation that petitioner has no legal "excuse" for her underlying refusal to pay (as the pre-Smith cases all hold, for

RFRA, a court cannot simply follow indiscriminately the holdings of any case decided before 1990 that rejected any sort of religious objection to any part of the federal tax system. The legislative history of the Act specifies that RFRA neither "approves nor disapproves of the result in any particular court decision involving the free exercise of religion." H.Rep. 103-88, 103d Cong., 1st Sess. 7 (1993); accord, S.Rep. 103-111, 103d Cong., 1st Sess. 9 (1993). What a statute means and requires is what the statute says; when the courts apply a statute, they must do so according to its terms. See, e.g., Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 142 L.Ed.2d 881, 119 S.Ct. 755, 760 (1999). That meaning is not set forth either in committee reports or in an amorphous body of "pre-Smith case law." App. A14; 170 F.3d at 179.

Thus, even though this Court concluded in United States v. Lee that "the tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates the religious belief," 455 U.S. at 260, it does not follow that this essentially factual proposition is beyond challenge under RFRA. The Act places the burden on the government to "demonstrate" that it has no way to satisfy its compelling interest without "substantially burdening" the exercise of an individual's religious beliefs. The example in Lee itself is particularly apt.

The Court held in Lee that the Free Exercise Clause did not give the Amish farmer and carpenter employees involved in that case, who were outside the protection of IRC §1402(g), the right not to participate in the Social Security system. Justice Department lawyers argued, and this Court accepted in that 1982 case, that no further exemption for the Amish than then

---

various reasons). Id. at 182. But that says nothing about waiver of these waivable penalties. No one with a right not to pay is even subject to such penalties.

existed could be allowed without risking the soundness of the Social Security system. But this proved false in fact. In the 1988 Tax Bill, Congress enacted the precise additional exemption that the Lee Court had held unnecessary, or even impossible. Pub.L. 100-647, 8007 (Oct. 22, 1988), adding new 26 U.S.C.§ 3127. This tale illustrates the difference between the standard under the Free Exercise Clause (even as sometimes construed before Smith) and that under RFRA, which requires the government to prove with evidence, rather than merely assert, that substantially burdening an individual's religious exercise is necessary to further a compelling governmental interest. See 42 U.S.C. §2000bb-2(3) (defining "demonstrates" to mean "meets the burden of going forward with the evidence and of persuasion"). Congress chose in RFRA to legislate against accepting mere argument in lieu of proof of government claims of inability to accommodate.

If the legislative history proves anything, it is that no government agency is above the obligation to comply with RFRA. The committee reports, House and Senate, expressly discuss the application of RFRA to the military, for example, as well as to prisons. H.Rep. 103-88, 103d Cong., 1st Sess. 8 (1993); S.Rep. 103-111, 103d Cong., 1st Sess. 9-12 (1993). Maintaining the national defense, according to the policies of Congress and the Administration, has always been considered a "governmental interest" of the most "compelling" kind; so has prison administration, to an only slightly lesser degree. These considerations had led this Court to require judicial deference and a lesser standard when religious rights were infringed in these contexts. See H.Rep. 103-88, at 7-8, discussing Goldman v. Weinberger, 475 U.S. 503 (1986), and O'Lone v. Shabazz, 482 U.S. 342 (1987).

Yet the legislative history confirms what the plain language states, that RFRA applies to all federal agencies, whether they be military branches or the IRS. 42 U.S.C.

§2000bb-2(1) (definition of "government"), §2000bb-3(a) (applicability to all agencies and departments). The Internal Revenue Code is thus not the only statute that the IRS must obey; RFRA is another and is equally binding. The respondent was therefore required to prove by evidence at trial that adding civil penalties to the amount to be collected from her involuntarily[14] is the "least restrictive means" available for accomplishing the important governmental end of collecting taxes.

Petitioner Adams was entitled to have her case adjudicated under currently-applicable statutory law. If the pre-Smith constitutional cases speaking to her situation apply a standard different from the one articulated in RFRA, or if they ignore any of the RFRA factors or turn them into "rhetorical questions," then these cases are inapposite. The holding of the court below, "that appellee was not required to produce evidence under the 'least restrictive means' prong of RFRA in order to prevail" (App. A18; 170 F.3d at 180), is directly contrary to the statutory language. 42 U.S.C. §2000bb-1(b), §2000bb-2(3).

The courts have a responsibility to apply RFRA's statutory "least restrictive means" test in a meaningful way, and the affected government agency cannot be excused from bringing forth evidence, at least, that the less restrictive means suggested by the religious objector herself are not feasible. In accepting the Treasury's RFRA-defeating approach, the courts below rendered a decision in conflict with the mandate of an important federal civil rights law. The blatantly erroneous decision in this

---

14. The requirement of collecting income tax from petitioner involuntarily itself results solely from respondent's total refusal, in arguable violation of RFRA, to accommodate petitioner Adams' religious scruples against paying income tax into the General Fund. Petitioner challenged that refusal in the courts below but has not presented it as a separate question in this Petition.

case has already been followed in at least one other circuit, see Browne v. United States, 176 F.3d 25 (2d Cir. 1999), pet. for cert. filed, No. 99-632 (filed Oct. 12, 1999). Certiorari should be granted to enforce the statutory language and uphold the Congressional policy that federal government agencies must meet a burden of proof under the "least restrictive means" test before unnecessarily burdening the exercise of sincere religious beliefs.

2. The lower courts defied this Court's binding precedent under the Free Exercise Clause when they permitted a government agency to discriminate against religious reasons, as compared with other equivalent explanations for noncompliance, in determining whether to exercise its statutory power to waive particular civil penalties.

The courts below failed to follow this Court's cases interpreting the Free Exercise Clause of the First Amendment when they dismissed petitioner's request that the IRS give equal consideration to her religious obligations as it gives to other individual circumstances that prevent compliance with federal income tax obligations. Congress allows the penalty for late filing of tax returns to be waived, in the discretion of the Commissioner, where there is "reasonable cause." 26 U.S.C. (IRC) §6651(a)(1).[15] Likewise, the penalty for failure to make

---

15. There is no civil penalty literally applicable to a complete failure to file a tax return; the penalty is for late filing. Measured as 5% per month of "the amount required to be shown as tax on such return," defined to mean the unpaid amount, id. §6651(b), the penalty reaches its maximum level after five months of lateness, at 25% Id. §6651(a)(1). The penalty for "fraudulent failure to file" is much higher.

quarterly estimated payments is waivable when the omission was due to an "unusual circumstance" which makes it "against equity and good conscience" to impose that penalty. Id. §6654(e)(3)(A). The court below ruled that because the regulations in question were "uniform and facially neutral," 170 F.3d at 181 n.10, they did not allow the sort of "individual exemption" discussed in Employment Division v. Smith, 494 U.S. 872, 884 (1990) (quoting Bowen v. Roy, 476 U.S. 693, 708 (1986) (plurality), explaining Sherbert v. Verner, 374 U.S. 398 (1963)). The Court should grant a writ of certiorari to correct this serious misunderstanding of precedent and deviation from an important aspect of First Amendment Free Exercise doctrine.

In Sherbert v. Verner, a Seventh Day Adventist was denied unemployment insurance benefits because she refused to work on Saturdays, her sabbath. The South Carolina law under which she was denied benefits provided that:

> to be eligible for benefits, a claimant must be "able to work and ... is available for work"; and, further, that a claimant is ineligible for benefits "[i]f ... he has failed, without good cause ... to accept available suitable work when offered him by the employment office or the employer ...."

374 U.S. at 400-01. This Court reversed the denial of benefits on the basis that the state's rejection of her claim was not the "least restrictive means" of achieving a "compelling governmental interest." In Smith, the Court determined that it would no longer adhere to that formulation as a general

---

Id. §6651(f). That penalty did not apply in this case. Thus, in effect, the civil penalty for failure to file a federal tax return at all is an addition of 25% of the tax amount.

statement of Free Exercise principle. The Court affirmed, however, a different rationale for the judgment in Sherbert and the cases which follow it[16]:

> [O]ur decisions in the unemployment cases stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of "religious hardship" without compelling reason.

Smith, 494 U.S. at 884, quoting Bowen v. Roy, 476 U.S. 693, 708 (1986) (plurality op.). Because Congress has mandated the same sort of "system of individual exemptions" from certain tax penalties, the rationale of Bowen v. Roy likewise applies to this case. The Free Exercise Clause therefore prohibits the respondent's agency from "refus[ing] to extend" its individualized system of waivers of penalties for late filing and failure to estimate to cases involving "religious hardship," such as this one. The courts below utterly failed to implement that binding rule.

The civil penalty provisions involved in this case provide that no addition to the tax shall be imposed for failure to file if such failure is "due to reasonable cause and not due to willful neglect," IRC §6651(a)(1), and that no estimated tax penalty shall be imposed if the Secretary determines that "by reason of ... unusual circumstances the imposition of such addition to tax would be against equity and good conscience." IRC §6654(e)(3)(A). As with the unemployment insurance system discussed in Sherbert, although these tax code provisions are "generally applicable, [and] religion-neutral," Smith, 494 U.S.

---

16. See Frazee v. Illinois Dept. of Employment Security, 489 U.S. 829 (1989); Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136 (1987); Thomas v. Review Board, 450 U.S. 707 (1981).

at 886, they create a "system of individual exemptions." Roy, 476 U.S. at 708. Under the rationale of the Roy plurality, as endorsed by the opinion of the Court in Smith, respondent may "not refuse to extend that system to cases of 'religious hardship' without compelling reason." Roy, id.; see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 543 (1993). In this case, the respondent has failed to suggest any such reason.

The lower courts' attempts to distinguish this Court's cases completely fail. The "good cause" criterion for voluntarily quitting one's job, at issue in the employment cases such as Sherbert, is "uniform and facially neutral" in the same way as are the penalty provisions of the Internal Revenue Code and their waiver clauses. This Court should grant certiorari in order to clarify the application of the equal-consideration rationale recognized in Smith to statutory systems other than unemployment compensation which provide for individualized assessment of reasons for relief from penalties and disabilities. The Court has often suggested that this Free Exercise equal treatment principle applies outside the unemployment context, but has never applied it in such a case.

The Internal Revenue Code provides that civil penalties for failure to file shall not be imposed if "such failure is due to reasonable cause and not due to willful neglect." 26 U.S.C. §6651(a)(1). The Treasury Regulations interpret this standard as requiring that despite "exercis[ing] ordinary business care and prudence" the taxpayer "was nevertheless unable to file the return within the prescribed time." 26 C.F.R. §301.6651-1(c)(1). As construed by this Court, the "principle underlying the IRS regulations and practices" is "that a taxpayer should not be penalized for circumstances beyond his [or her] control ...." United States v. Boyle, 469 U.S. 241, 248 n.6 (1985). Unless religious reasons can be categorically excluded from this waiver provision, the Tax Court's assessment of these

penalties, affirmed by the court of appeals, was mistaken, because petitioner was without fault in her late filing. Her "failure to file on time was the result neither of carelessness, reckless indifference, nor intentional failure." Id. at 246 n.4. Neither at trial nor on appeal has the respondent ever articulated a neutral principle on the basis of which religious hardships could properly be excluded from a reasonable cause determination.

The respondent Commissioner's own Internal Revenue Manual ("IRM"), designed to guide IRS agents in making these determinations, lists several situations which may typically establish "reasonable cause," even though a taxpayer has consciously decided not to file tax returns or to pay tax. For example, a secular hardship imposed by the death or serious illness of a family member is reason enough not to impose a penalty for late filing -- yet the courts below in this case have allowed respondent to adhere to the position that a religious hardship that prevents timely filing (or payment[17]) is not sufficient.

At the time petitioner's case was under consideration by the IRS and in the Tax Court, the IRM provided, in part:

> (1) The following guidelines, as appropriate, will be applied when penalties are not to be asserted or are to be abated due to reasonable cause:
>
> (a) Death or serious illness ... in [the taxpayer's] immediate family. ...

---

17. As noted in the Statement, no penalties for failure to pay are at issue in this case. Indeed, the failure of the IRS to pursue the at least equally applicable failure-to-pay penalty suggests that the government can in fact advance its interest in tax collection while forgoing certain penalties.

(b) Unavoidable absence of the taxpayer. ...

IRM 5172.12[18]; accord, IRM 1218 (Policies of the Internal Revenue Service Handbook), Policy Statement P-2-7; IRM 120.1.1.3.1.2.4(1)(a),(3). Significantly, these examples of adequate reasons are not based on physical impossibility.

A taxpayer whose father dies and who does not file her return or pay on time so that she may attend the funeral, or because she is so distraught, has made a conscious decision that attending to funeral-related concerns is more important than filing a timely tax return. A taxpayer who cannot file because of preoccupation or full-time commitment to the care of seriously ill relative may find himself in that position for years on end. Yet each such case is considered individually and may be accepted. Petitioner's unrebutted and unchallenged testimony, as stipulated by respondent and found to be fact by the Tax Court, was that her beliefs actually "precluded" her from filing on time. Stip. ¶46; App. A38. Yet because it was religious in nature, this equally strong showing was rejected by respondent.

The intended flexibility of the regulatory standard is clear from the terms of IRS Policy Statement P-2-7 (IRM 1218; also referenced at IRM 120.1.1.3.1.1), IRM 120.1.1.1.4(4), IRM 120.1.1.3.1(3), subpara. 1 and 3, IRM 120.1.1.3.1(5) ("Each case must be judged individually based on the facts and circumstances at hand."). (Note the use of the term "guidelines" in IRM 5172.12(1); see also IRM 5172.11(6) and IRM 5172.12(2).) As the Policy states, "any reason for delinquency

---

18. This provision and others governing penalties are in the process of being replaced by a consolidated and revised "Penalties Handbook," which is IRM 120.1. The provisions of the new Handbook are substantially similar, however. The referenced provisions of the Manual appear in the Appendix to this Petition.

in filing or making ... payments which established that the taxpayer exercised ordinary business care and prudence but was nevertheless unable to comply within the prescribed time will be accepted as reasonable cause." Policies of the IRS Handbook, P-2-7, IRM 1218. This liberal reading of "reasonable cause" also comports with the Court's mandate that tax penalty provisions be strictly construed against the government. See Ivan Allen Co. v. United States, 422 U.S. 617, 627 (1975); Commissioner v. Acker, 361 U.S. 87, 91 (1959).

It is no contradiction of ordinary "care and prudence" for a person to adhere to her religious principles in the conduct of her business or personal financial affairs, nor is there any doubt that the petitioner's beliefs render her "unable to comply" with the requirements of the Code.[19] 26 C.F.R. §301.6651-1(c)(1). Moreover, when her discernment of the requirements of her faith sharpened, and she concluded that she could file returns

---

19. In Ehlert v. United States, 402 U.S. 99 (1971), this Court expressly declined to "take sides in the somewhat theological debates about the nature of 'control' over one's own conscience" (id. at 105) that had been addressed by certain lower court decisions under the draft law. The Court ruled that a post-induction opportunity to seek discharge from the Army as a conscientious objector, without having to bear arms within the military while pursuing that discharge, justified the Selective Service System in refusing to hear CO claims that "crystallized" after receipt of an induction notice, despite a procedure calling for cases to be reopened based on the emergence of circumstances that were "beyond [the draftee's] control." See United States v. Jenkins, 420 U.S. 358, 361-62 (1975). The issue of whether a person's religious beliefs are, legally speaking, within her "control" need not be decided here either, because the Treasury Regulations and IRS Manual permit "reasonable cause" sometimes to be based on the making of a pressured choice not to comply (such as in the example of a family illness or funeral), even where there is not an absolute "inability" to file a return.

even though she could not pay, she promptly did so. Nevertheless, she was denied abatement of the lateness penalty, in contradiction of IRM 120.1.1.3.1(6). Even if petitioner's faithfulness affords her no immunity from tax, only discrimination against religious reasons for noncompliance could justify respondent's unfair refusal to excuse the penalties.

In addition, the courts below disregarded petitioner's argument that neither the respondent nor any court may label an individual's action in obedience to her theological principles as lacking in "reasonable cause," IRC §6651(a)(1), without violating the Establishment Clause of the First Amendment as well. It is either inherently reasonable for petitioner Adams to act in accordance with her religious beliefs, or else beyond the ken of any court or government agency to say whether it is or not. See United States v. Ballard, 322 U.S. 78, 86-87 (1944); Callahan v. Woods, 658 F.2d 679, 685 (9th Cir. 1981) (Adams, J., 3d Cir., sitting by designation: "courts may not inquire into the truth, validity or reasonableness of a claimant's religious beliefs"). By making "reasonable cause" the basis for exemption from imposition of this penalty, Congress makes waiver of that provision constitutionally obligatory in the case of a religious objector such as the petitioner.

The Internal Revenue Code provides a similar exemption with respect to the penalty for failure to pay estimated tax. That section provides that "No addition to tax shall be imposed ... to the extent the Secretary determines that by reason of ... unusual circumstances the imposition of such addition to tax would be against equity and good conscience." 26 U.S.C. §6654(e)(3). Petitioner's religious beliefs, coupled with the requirement of her Quaker religion that she act in accordance with that leading, are "unusual," as they have always been since the founding of the Religious Society of Friends in 1650. The American tradition of tolerance and respect for religious conscience surely makes it "against equity and good conscience"

to penalize her for adhering to those beliefs and acting accordingly in relation to her income tax obligations.

Because the Internal Revenue Code provides for abatement of lateness and failure-to-estimate penalties upon a showing of "reasonable cause" or where imposition of the penalty "would be against equity and good conscience," 26 U.S.C. §§6651, 6654, Smith's confirmation of the Sherbert equal-treatment rule required reversal of these penalties. Moreover, the court below missed a truly fundamental point in referring to "civil disobedience" as constituting only a "slightly different context" from religious convictions that prevent compliance with a legal obligation of general applicability. See App. A22; 170 F.3d at 182. It is not a form of "civil disobedience" to request a fair application of the exemptions from penalty that Congress has enacted.[20] The First Amendment places the free exercise of religion in a special category, requiring special protection, as does the Religious Freedom Restoration Act. Laws which interfere, in particular cases, with religious exercise cannot be casually brushed off by reference to "sincerely felt political and religious beliefs" which may require "facing the consequences." Id. One of those "consequences," under the Constitution and laws of the United States, cannot be the refusal of government agencies to apply discretionary penalty waivers that are triggered by a showing of "reasonable cause." Action which demands in good faith that the government honor one's legal rights is not civil disobedience.

Whether resolved by a holding under a straightforward

---

20. In our system, "civil disobedience" must be understood as action in violation of "formally binding general law," on the basis of principle, and then only when undertaken "without challenging the validity of the law." Alexander M. Bickel, *The Morality of Consent* 99 (1975).

construction of the Internal Revenue Code that religious inability to comply is itself a "reasonable cause" to refrain from adding penalties to a tax delinquency,[21] or by holding that the addition of penalties is itself unncessarily restrictive of religious liberty under RFRA, or by applying a First Amendment equal treatment principle, the Tax Court's assessment of penalties should have been reversed. For these reasons, a writ of certiorari should be granted to correct the lower courts' departure from this Court's settled precedent under the Free Exercise Clause.

CONCLUSION

For the foregoing reasons, petitioner PRISCILLA M. LIPPINCOTT ADAMS prays that this Court grant her petition for a writ of certiorari and reverse the judgment below.

Respectfully submitted,

PETER GOLDBERGER
Counsel of Record
JAMES H. FELDMAN, JR.
50 Rittenhouse Place
Ardmore, PA 19003-2276
(610) 649-8200

JOHN W. WHITEHEAD
STEVEN H. ADEN
THE RUTHERFORD INSTITUTE

---

21. And a fortiori that penalizing petitioner additionally for her failure to pay on the basis of religious principle, an obviously "unusual circumstance," is "against equity and good conscience." IRC §6654(e)(3).

P.O. Box 7482
Charlottesville, VA 22906-7482
(804) 978-3888

THOMAS STEPHEN
NEUBERGER
Affiliated Attorney with
The Rutherford Institute
THOMAS S. NEUBERGER, P.A.
200 West Ninth St., suite 702
Wilmington, DE 19801
(302) 655-0582

Attorneys for Petitioner

November 8, 1999.

PRISCILLA M. LIPPINCOTT ADAMS, Appellant v. COMMISSIONER OF INTERNAL REVENUE

No. 98-7200

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

170 F.3d 173

January 14, 1999, Argued

March 4, 1999, Filed

ON APPEAL FROM THE UNITED STATES TAX COURT. (Docket Nos. 96-15535 and 97-3437). Tax Court Judge: Honorable Maurice B. Foley.

COUNSEL:
Peter Goldberger, Esquire (Argued), James H. Feldman, Jr., Esquire, Ardmore, PA, Attorneys for Appellant.

Loretta C. Argrett, Esquire, Assistant Attorney General, Michelle B. O'Connor, Esquire (Argued), Gilbert S. Rothenberg, Esquire, Tax Division, Department of Justice, Washington, DC, Attorneys for Appellee.

JUDGES [174]:
Before: GREENBERG and RENDELL, Circuit Judges, and DEBEVOISE, District Judge. *

* Honorable Dickinson Debevoise, United States Senior District Court Judge for the District of New Jersey, sitting by designation.

OPINION OF THE COURT

RENDELL, Circuit Judge.

Priscilla Adams claims that Religious Freedom Restoration Act ("RFRA") requires accommodation of her religious beliefs so that her tax payments do not fund the military. She also argues that RFRA and the free exercise clause mandate a finding that her religious beliefs constitute "reasonable cause" under 26 U.S.C. § 6651 for her failure to file returns or pay tax and an "unusual circumstance" which makes it "against equity and good conscience" for the Commissioner to impose the penalty for failure to estimate under 26 U.S.C. § 6654.

I. Factual and Procedural History

The facts are not in dispute. Adams is a devout Quaker; she currently works as a "Peace Field Secretary" for the Philadelphia Yearly Meeting of the Religious Society of Friends. She sincerely believes that participation in war is contrary to God's will, and hence, that the payment of taxes to fund the military is against the will of God. From 1985 to 1989, Adams declared herself exempt from taxation, so no federal income tax would be withheld from her pay. In 1989, the IRS sent a letter to her employer, the Philadelphia Yearly Meeting, directing it to withhold taxes from her salary as if she were married and claiming one withholding allowance.

Adams has taken pains to ensure that she does not profit from her tax protests and to demonstrate that her beliefs regarding refusal to pay taxes are sincere and are the result of being called or directed by God, in that she has been tested and challenged by "clearness committees" of members of her Meeting that have been convened to examine her beliefs on this topic. They have determined that the course of her conduct is the result of a "leading" from God. She asserts that

she would voluntarily pay all of her federal [175] income taxes if the money she paid were directed to a fund that supported only non-military spending, or if her payments could be directed to non-military expenditures, or that, with the consultation of a clearness committee, she would be willing to consider any other form of accommodation of her beliefs that could be offered by the government.

The Commissioner assessed deficiencies and penalties against Adams for the years 1988, 1989, 1992, 1993, and 1994. The Tax Court determined that Adams was not exempt from the payment of taxes under RFRA and was liable for the deficiencies and penalties assessed against her, relying on *United States v. Lee,* 455 U.S. 252, 71 L. Ed. 2d 127, 102 S. Ct. 1051 (1982), and other case law preceding *Employment Division v. Smith,* 494 U.S. 872, 108 L. Ed. 2d 876, 110 S. Ct. 1595 (1990). Adams now appeals to this court. We have jurisdiction pursuant to 26 U.S.C. § 7482(a) (1994). Our review is plenary, as all of the issues raised are matters of law. See *Geisinger Health Plan v. Commissioner,* 30 F.3d 494, 498 (3d Cir. 1994); *Lazore v. Commissioner,* 11 F.3d 1180, 1182 (3d Cir. 1993).

II. Discussion

A. RFRA Claim

The parties do not contest the constitutionality or the applicability of RFRA to the case at hand. They agree that RFRA applies to the federal government, as *Boerne v. Flores,* 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997), held only that RFRA was unconstitutional as applied to the states under section 5 of the Fourteenth Amendment. For the purposes of this appeal, we assume without deciding that RFRA is constitutional as applied to the federal government. See *Alamo v. Clay,* 137 F.3d 1366, 1367 (D.C. Cir. 1998). n1

----------Footnotes----------

n1 In general, courts that have addressed the question of constitutionality have found that RFRA is constitutional as applied to the federal government. See *In re Young,* 141 F.3d 854 (8th Cir.), cert. denied, 119 S. Ct. 43 (1998); see also *EEOC v. Catholic Univ. of America,* 317 U.S. App. D.C. 343, 83 F.3d 455, 468-70 (D.C. Cir. 1996) (finding RFRA constitutional as applied to Title VII, but relying on Fifth Circuit's decision in Boerne); but see *Boerne,* 117 S. Ct. at 2171 (Stevens, concurring, questioning Establishment Clause implications of RFRA); 141 F.3d at 862-68 (Bogue, dissenting); *United States v. Grant,* 117 F.3d 788, 792 n.6 (5th Cir. 1997) (questioning RFRA's viability in the federal context); *In re Gates,* 212 B.R. 220 (Bankr. W.D.N.Y. 1997) (finding that Boerne overruled RFRA altogether). Some commentators have noted that RFRA may be unconstitutional as applied to federal law. See Marci Hamilton, The Religious Freedom Restoration Act is Unconstitutional, Period, 1 U. Pa. J. Const. L. 1 (1998); Aurora R. Bearse, Note, RFRA: Is it Necessary? Is it Proper?, 50 Rutgers L. Rev. 1045 (1998); Edward J.W. Blatnik, Note, No RFRAF Allowed: The Status of the Religious Freedom Restoration Act's Federal Application in the Wake of City of Boerne v. Flores, 98 Colum. L. Rev. 1410 (1998); but see Thomas C. Berg, The Constitutional Future of Religious Freedom Legislation, 20 U. Ark. Little Rock L.J. 715 (1998) (arguing that RFRA is constitutional as applied to the federal government).

----------End Footnotes----------

RFRA provides:

> (a) In general
>
> Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.
>
> (b) Exception
>
> Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person --
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest.

Adams argues that under RFRA, she is exempt from federal income tax for the years in which she has been assessed a deficiency, because requiring her to pay these taxes substantially burdens her religious beliefs. She concedes that the government has a compelling interest in the collection of taxes, but contends that the IRS failed to meet its burden under RFRA of proving that it could not accommodate her, that is, that there is no less restrictive means of furthering the government's interest. She argues that this failure of proof requires this court to reverse the Tax Court and find that Adams owes no taxes for the years in question, and that she [176] is not required to pay income taxes so long as the Commissioner does not act to accommodate her objections. Adams contends that she is not asking to be exempted from the payment of taxes altogether, but that she wants her beliefs to be "accommodated," because RFRA requires that the IRS

accommodate her objection, unless the refusal to do so is the "least restrictive means" for achieving the government's compelling interest in tax collection. The Commissioner accepts Adams's acknowledgment that the government has a compelling interest in the collection of taxes, and urges us to find that the current system -- uniform and mandatory in nature -- is the least restrictive means of furthering that interest.

There is little doubt that RFRA was enacted as a direct response to *Employment Division v. Smith*, and to restore the tests that were routinely employed before the Supreme Court's ruling that neutral, generally applicable laws may impinge on religious practices, even in the absence of a compelling state interest. See 494 U.S. at 882-84; *Boerne*, 117 S. Ct. at 2161. RFRA requires courts to employ the test set forth above in the statutory language. First, the claimant must demonstrate a "substantial burden" on her exercise of her religious beliefs. If she does so, the burden shifts to the government to demonstrate that the regulation or practice at issue furthers a "compelling interest," and that it furthers that interest by the "least restrictive means." See § 2000bb-1; *Small v. Lehman*, 98 F.3d 762, 767 (3d Cir. 1996), overruled by 117 S. Ct. 2157 (1997). n2

----------Footnotes----------

n2 *Small* was overruled by *Boerne*. However, we use this case and other cases applying RFRA to state institutions and laws as a guide to how we should interpret the statute, although we realize we are not bound by their dictates.

----------End Footnotes----------

In enacting RFRA, Congress specifically announced its

intent to "restore" the "compelling interest" test set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder*:

> The purposes of this chapter are --
>
> (1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398, 10 L. Ed. 2d 965, 83 S. Ct. 1790 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and
>
> (2) to provide a claim or defense to persons whose religious exercise is substantially burdened by the government.

§ 2000bb(b).

However, Congress's intent with regard to the precise contours of the elements of the RFRA test is a somewhat different matter, as neither the statutory provisions, the legislative history, nor the floor debates indicate exactly how the elements of the test are defined, or are defined in relation to the pre-Smith case law. See § 2000bb(a); § 2000bb-2; S. Rep. No. 103-111 (1993), at 5-9, 15-16, reprinted in 1993 U.S.C.C.A.N. 1893, 1894-98, 1904-05; see also 139 Cong. Rec. S1415-01, S14515-16 (daily ed. Oct. 27, 1993) (statements of Senator Chaffee); 139 Cong. Rec. S14461-01, S14462, S14468, S14469 (daily ed. Oct. 26, 1993) (statements of Senators Feingold, Lieberman, and Bradley); 139 Cong. Rec. S14350-01, S14350, S14353 (daily ed. Oct. 26, 1993) (statements of Senators Kennedy and Hatch); 139 Cong. Rec. H2356-03, H2356-59, H2360-61 (daily ed. May 11, 1993) (remarks of Representatives Brooks Edwards, Fish,

Hughes, and Schumer); The Religious Freedom Restoration Act: Hearing on S. 2969 Before the Comm. on the Judiciary of the United States Senate, 102nd Cong. 2, 129-35 (Sept. 18, 1992). While prior cases touched on one or more of the aspects of the RFRA test, these elements -- substantial burden, compelling interest, least restrictive means -- did not constitute a comprehensive standard, let alone a uniform or established test, prior to Smith. n3 [177] The instant case presents the issue, as to whether, and if so, how, we should construe RFRA in light of prior case law. The legislative history of both the House and the Senate versions of RFRA contain explicit indications that prior case law is central to the understanding of the compelling interest test:

> The committee wishes to stress that the act does not express approval or disapproval of the result reached in any particular court decision involving the free exercise of religion, including those cited in the act itself. This bill is not a codification of the result reached in any prior free exercise decision but rather the restoration of the legal standard that was applied in those decisions. Therefore, the compelling interest test generally should not be construed more stringently or more leniently than it was prior to Smith.

S. Rep. No. 103-111 at 9; H.R. Rep. No. 103-88 at 21 (1993). n4

----------Footnotes----------

n3 The Supreme Court stated in *Boerne*, "the Act imposes in every case a least restrictive means requirement -- a requirement that was not used in the pre-Smith jurisprudence RFRA purported to codify." See 117 S. Ct. at

2171. We note that this "element" has in fact appeared sporadically in those terms or as a "narrowly tailored" requirement. See *Smith,* 494 U.S. at 894-95 (O'Connor, concurring) (noting that in free exercise cases, "we have respected both the First Amendment's express textual mandate that the governmental interest in regulation of conduct by requiring the government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest," citing *Hernandez v. Commissioner,* 490 U.S. 680, 699, 104 L. Ed. 2d 766, 109 S. Ct. 2136 (1989); *Lee,* 455 U.S. at 257-58, cited in S. Rep. 103-111 at 7; see also *Hobbie v. Unemployment Appeals Comm'n.,* 480 U.S. 136, 140-42, 94 L. Ed. 2d 190, 107 S. Ct. 1046 (1987) (strict scrutiny applies to free exercise unemployment compensation challenge); *Thomas v. Review Bd.,* 450 U.S. 707, 718, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981) ("The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest.")

n4 The floor debates contain an extended "colloquy" between Senators Grassley and Hatch that occurred during the Judiciary Committee markup of the bill, which states in pertinent part:

> Grassley: Does this bill change the way courts assess a "compelling state interest"? Will it still be up to the judge -- who will look at all the facts in the case -- to say whether there is a compelling interest? In other words, this bill does not purport to legislate a definition of compelling interest, does it?

> Hatch: RFRA reestablishes a very familiar and traditional standard of review that the courts have been applying since the 1963 decision Sherbert v. Verner. That is why we do not attempt to define the standard in the bill. This bill does not dictate the proper result in a particular free exercise case nor does it identify specific governmental interests that are compelling. The courts will continue to determine whether burdens on religious exercise are justified, based upon a consideration and weighing of all relevant facts and circumstances. Historically, the courts have had little difficulty identifying important governmental interests. For example, the courts have found eradication of racial discrimination to be a compelling governmental interest.

139 Cong. Rec. S14461-01, S14470 (daily ed. Oct. 27, 1993).

----------End Footnotes----------

The legislative history accompanying the Senate bill also includes the following directive: "The committee expects that the courts will look to free exercise cases decided prior to Smith for guidance in determining whether the exercise of religion has been substantially burdened and the least restrictive means have been employed in furthering a compelling governmental interest." S. Rep. 103-111 at 8-9. n5 Cases decided before Smith involving application of the standards to the tax system, or to situations analogous to the tax system are, therefore, instructive. In *United States v. Lee,* the Supreme Court rejected a free exercise challenge to the imposition of social security taxes based on the fact that mandatory participation was necessary to the functioning of

the social security program, and that a voluntary system would be impossible to administer. See 455 U.S. at 257-59. In so finding, the Court noted:

> Religious beliefs can be accommodated, see, e.g., *Thomas, supra; Sherbert, supra,* but there is a point at which accommodation would "radically restrict the operating latitude of the legislature." . . . Unlike the situation presented in *Wisconsin v. Yoder, supra,* it would be difficult to accommodate the comprehensive social security system with myriad exceptions flowing from a wide variety of religious beliefs. The obligation to pay the social security tax initially is not fundamentally different from the obligation to pay income taxes; the difference -- in theory at least -- is that the social [178] security tax revenues are segregated for use only in furtherance of the statutory program. There is no principled way, for purposes of this case, to distinguish between general taxes and those imposed under the Social Security Act. If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief. . . . Because the broad public interest in maintaining sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax.

455 U.S. at 259-60.

----------Footnotes----------

n5 In enacting RFRA, Congress seized upon language from Supreme Court opinions to create a statutory cause of action. In determining the bounds of Congressional intent in creating that statutory right we look to Congress's statements about pre-Smith case law as instructive for our purposes, namely, to "say what the law is." *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 177, 2 L. Ed. 60 (1803).

----------End Footnotes----------

In *Hernandez*, members of the Church of Scientology raised several challenges to the disallowance of claimed exemptions for the monies they had paid for spiritual training classes and sessions, including a free exercise challenge. In upholding the disallowance of exemptions in the face of their free exercise challenge, the *Hernandez* court relied on *Lee*:

> Our decision in *Lee* establishes that even a substantial burden would be justified by the "broad public interest in maintaining a sound tax system," free of "myriad exceptions flowing from a wide variety of religious beliefs." 455 U.S. at 260. . . . That these cases involve federal income taxes, not the Social Security system, is of no consequence. Ibid. The fact that Congress has already crafted some deductions and exemptions in the Code also is of no consequence, for the guiding principle is that a tax "must be uniformly applicable to all, except as Congress provides explicitly otherwise." *Id.* at 261.

490 U.S. at 699 (emphasis added in original).

Lee and *Hernandez* are both part of a line of cases that have refused to recognize free exercise challenges to the payment of taxes or penalties imposed due to a refusal to pay taxes as a protest against the military activities of the United States. See, e.g., *Lull v. Commissioner,* 602 F.2d 1166 (4th Cir. 1979) (per curiam); *Graves v. Commissioner,* 579 F.2d 392 (6th Cir. 1978); *First v. Commissioner,* 547 F.2d 45 (7th Cir. 1976) (per curiam); *Autenrieth v. Cullen,* 418 F.2d 586 (9th Cir. 1969); see also *Bethel Baptist Church v. United States,* 822 F.2d 1334 (3d Cir. 1987) (social security taxes); *Kahn v. United States,* 753 F.2d 1208, 1215-16 (3d Cir. 1985); *McLaughlin v. Commissioner,* 832 F.2d 986 (7th Cir. 1987); *Nelson v. United States,* 796 F.2d 164 (6th Cir. 1986); *McKee v. United States,* 781 F.2d 1043 (4th Cir. 1985); *Collett v. United States* , 781 F.2d 53 (6th Cir. 1985) (per curiam); *Jenney v. United States,* 755 F.2d 1384 (9th Cir. 1985); *Wall v. United States,* 756 F.2d 52 (8th Cir. 1985); *Welch v. United States,* 750 F.2d 1101 (1st Cir. 1985); *Ballinger v. Commissioner,* 728 F.2d 1287 (10th Cir. 1984); cf. *United States v. Malinowski,* 472 F.2d 850 (3d Cir. 1973) (First Amendment an insufficient defense to tax evasion). n6

----------Footnotes----------

n6 In discussing instances in which the "compelling interest" test has been used to uphold governmental practices, Congress cited cases disallowing the availability of tax exemptions on the basis of religious practice and belief, namely, Hernandez, *Lee, and Bob Jones University v. United States,* 461 U.S. 574, 76 L. Ed. 2d 157, 103 S. Ct. 2017 (1983). See S. Rep. No. 103-111 at 5.

----------End Footnotes----------

In the case before us, the Tax Court stated that the "uniform, mandatory participation in the Federal income tax system, irrespective of religious belief, is a compelling governmental interest. . . . As a result, requiring petitioner's participation in the Federal income tax system is the only, and thus the least restrictive, means of furthering the Government's interest." See *Adams v. Commissioner,* 110 T.C. 137, 139 (1998), citing *Hernandez,* 490 U.S. at 699-700; *Lee*, 455 U.S. at 260. Adams argues that the tax court misconstrued the compelling interest, and did so in so broad a manner, that the court [179] did not address the "least restrictive means" prong. She contends that the government did not meet its burden in this regard. We disagree.

Mindful of the comments of both the House and Senate, while we are not bound by the results in *Lee* and *Hernandez*, we cannot help but be guided by their reasoning in determining whether the least restrictive means have been employed to further the government's compelling interest. Viewing the requirements of RFRA through the helpful lens of pre-Smith case law, we conclude that the nature of the compelling interest involved-- as characterized by the Supreme Court in *Lee*-- converts the least restrictive means inquiry into a rhetorical question that has been answered by the analysis in *Lee*. The least restrictive means of furthering a compelling interest in the collection of taxes -- a compelling interest that Adams has conceded -- is in fact, to implement that system in a uniform, mandatory way, with Congress determining in the first instance if exemptions are to built into the legislative scheme. The question of whether government could implement a less restrictive means of income tax collection surfaced in pre-Smith case law and was answered in the negative based on the practical need of the government for uniform administration of taxation, given particularly

difficult problems with administration should exceptions on religious grounds be carved out by the courts. See *Lee,* 455 U.S. at 259-60. We acknowledge the sincerity of Adams's beliefs, but as the Supreme Court noted in Lee, we can easily imagine a plethora of other sects that would also have an equally legitimate concern with the usage of tax dollars to fund activities antithetical to their religion. See 455 U.S. at 259. We also note that the same concerns with religious pluralism that prompted the passage of RFRA have also prompted past courts' reluctance to become involved in determining whether a claimant's beliefs are "sincerely held," due to the multiplicity of beliefs in this country; these concerns also fortify our resistance to court-created exemptions to the income tax system. See *Lee,* 455 U.S. at 259; *Lull,* 602 F.2d at 1168-69; cf. *Kahn,* 753 F.2d at 1214.

Our approach to this particular form of tax challenge under RFRA is consistent with that of the Ninth Circuit Court of Appeals, the only other circuit court to have wrestled with this issue in a similar factual context. In *Goehring v. Brophy*, a group of college students challenged the collection of student fees under RFRA, as those fees subsidized a health insurance plan that covered abortion services. 94 F.3d 1294, 1297 (9th Cir. 1996), cert. denied, 117 S. Ct. 1335 (1997), overruled by 117 S. Ct. 2157. In analyzing the "least restrictive means" prong of the RFRA test, the court analogized the challenge to university funding to that of free exercise challenges to the government's use of tax dollars. *See id.* 94 F.3d at 1300. The court then looked to Lee as its guide, and found that the fiscal vitality of the university fee system would be undermined if the plaintiffs were exempted from paying their fees on free exercise grounds, as mandatory participation was necessary to ensure the survival of the student health insurance program. *See id.* The court also relied on the reasoning in *Autenreith*, a pre-Lee war tax

protester case, as persuasive authority for its decision that mandatory student participation in a health insurance scheme was the least restrictive means of accomplishing the University's goals. 94 F.3d at 1301-02. We also find this reasoning instructive:

> The Income Tax Act does not 'aid one religion, aid all religions, or prefer one religion over another.' Not does it punish anyone 'for entertaining or professing religious beliefs or disbeliefs' . . . . It taxes plaintiffs like all others, because they are citizens or residents who have taxable income. On matters religious, it is neutral. If every citizen could refuse to pay all or part of his taxes because he disapproved of the government's use of the money, on religious grounds, the ability of the government to function could be impaired or even destroyed. . . . There are few, if any governmental activities to which some person or group might not object on religious grounds.

418 F.2d at 588-89, cited in 94 F.3d at 1301-02.

[180] In another case decided by the Court of Appeals for the Ninth Circuit, *Droz v. Commissioner*, the appellant had challenged the assessment of unpaid self-employment social security taxes under the free exercise clause, claiming that he had religious objections to the social security system. 48 F.3d 1120, 1121 (9th Cir. 1995). The court determined that the RFRA test should be applied to his claim, and then looked to Lee as the determinative case in analyzing his claim. See *id.* at 1123. The *Droz* court denied his claim, noting that although compulsory participation in the social security system interfered with his free exercise rights, allowing him to opt out of the system on religious grounds would threaten the

stability of the social security system by opening the door to myriad religious exceptions. See *id.* at 1123-24; cf. *Sherbert,* 374 U.S. at 408-09 (noting that administrative problems rendering a scheme unworkable could be the basis for denial of religious accommodation). n7

----------Footnotes----------

n7 A number of RFRA cases arising in other factual contexts also demonstrate a sensitivity to the influence of pre-RFRA case law on the analysis of claims at hand. For example, in the context of RFRA challenges to prison policies and regulations, courts found that they still owe substantial deference to the judgment of prison administrators -- as was the practice under prior case law in determining the interests being furthered and means employed. See *Lawson v. Singletary,* 85 F.3d 502, 512 (11th Cir. 1996), overruled by 117 S. Ct. 2157 (1997) (finding that the "least restrictive means" prong of RFRA was coextensive with the Supreme Court's decision in *Procunier v. Martinez,* 416 U.S. 396, 40 L. Ed. 2d 224, 94 S. Ct. 1800 (1974), in which the "limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved."); *Jolly v. Coughlin,* 76 F.3d 468, 476 (2d Cir. 1996), overruled by 117 S. Ct. 2157 (1997) (stating in its analysis of a challenge to TB regulations that its inquiry would occur "against the backdrop of prior decisions recognizing that courts are ill-equipped to substitute their judgments on matters of prison administration for those of prison authorities"); *Hamilton v. Schriro,* 74 F.3d 1545, 1554 n.9 (8th Cir. 1996), overruled by 117 S. Ct. 2157 (1997) (court looks to Supreme Court precedent, RFRA's legislative history, and its own case law for guidance in interpreting RFRA).

----------End Footnotes----------

Adams also argues that a later Congressional enactment of the exemption the Supreme Court refused to allow in *Lee* demonstrates that the Commissioner can and should accommodate religion through a series of exemptions or alternative approaches to tax collection or at least should prove why such religiously-based exemptions are not feasible. However, in making this argument, Adams misconstrues the nature of the tax system itself. We do not doubt that such legislative enactments can and do occur, but tax exemptions are a matter of legislative grace, see *Lull,* 602 F.2d at 1168, citing *New Colonial Ice Co. v. Helvering,* 292 U.S. 435, 78 L. Ed. 1348, 54 S. Ct. 788 (1934). It does not follow from Congressional action on such matters that the Commissioner or the courts are therefore encouraged to carve out exceptions to the statutory scheme. n8

----------Footnotes----------

n8 The fact that Adams has suggested a number of alternative modes of tax collection for herself (religiously-based checkoffs on the tax forms, or a separate non-military based fund for tax monies) is beside the point. As Justice Blackmun noted, "A judge would be unimaginative indeed if he could not come up with something a little less 'drastic' or a little less 'restrictive' in almost any situation, and thereby enable himself to vote to strike legislation down." *Illinois State Bd. of Elections v. Socialist Workers Party,* 440 U.S. 173, 188-89, 59 L. Ed. 2d 230, 99 S. Ct. 983 (1979) (concurring).

----------End Footnotes----------

Adams contends further that a finding against her is tantamount to exempting the IRS from RFRA altogether. We disagree. She has contested the current system of income tax collection on the basis of her religious beliefs, and the result this court reaches in evaluating her particular challenge is dictated by prior case law. This finding does not preclude the application of RFRA to the IRS in other factual contexts. In sum, we find that the Tax Court engaged in an appropriate analysis of Adams's RFRA claim based upon *United States v. Lee,* and that appellee was not required to produce evidence under the "least restrictive means" prong of RFRA in order to prevail.

B. Liability for Penalties Assessed

Under 26 U.S.C. § 6651(a), if a taxpayer fails to file, a penalty will be added unless the taxpayer can demonstrate 1) lack of willful neglect, and 2) reasonable cause. [181] Willful neglect may be read as "meaning a conscious, intentional failure or reckless indifference." See *United States v. Boyle,* 469 U.S. 241, 245, 83 L. Ed. 2d 622, 105 S. Ct. 687 (1985). Under the case law and appropriate regulations, in order to demonstrate "reasonable cause," a taxpayer must demonstrate that she exercised ordinary care and prudence but nevertheless was unable to file the return within the time allowed. n9 See id.; *Sanderling, Inc. v. Commissioner,* 571 F.2d 174, 178-79 (3d Cir. 1978). Whether the elements that constitute "reasonable cause" are present in "a given case is a question of fact, but what elements must be present to constitute 'reasonable cause' is a question of law." *Boyle,* 469 U.S. at 249 n.8.

----------Footnotes----------

n9 A "reasonable cause" exception on the basis of

religious opposition to war is somewhat difficult to claim from the outset, due to the existence of cases upholding the assessment of a "frivolous return" penalty under 26 U.S.C. § 6702 against persons claiming "war tax" deductions or exemptions. See *Nelson,* 796 F.2d at 165-67 (addressing constitutionality of section 6702); *Welch,* 750 F.2d at 1108-09 (rejecting free exercise challenge to section 6702); Tax Equity and Fiscal Responsibility Act, S. Rep. 97-494 (1982), 1982 U.S.C.C.A.N. 781, 1023-24 (discussing protest returns, including "war tax" protest returns, as necessitating the enactment of section 6702).

----------End Footnotes----------

Adams claims that *Scott v. Commanding Officer,* 431 F.2d 1132, 1136 (3d Cir. 1970), a conscientious objector case, indicates that she was compelled by her beliefs not to file, and that as a result, she has demonstrated reasonable cause under the statute, because the beliefs inducing her not to file her returns were so powerful that her actions were beyond her control. In so claiming, she cites to language in Scott stating that: "beliefs of conscience are always beyond one's control; one cannot sincerely turn his conscience on and off at will." 431 F.2d at 1136. Similarly, Adams claims that the waiver provision of section 6654(e)(3) for "unusual circumstances" applies to her case, claiming that her adherence to religious beliefs and subsequent refusal to pay taxes -- the "reasonable cause" argument set forth above -- is a sufficiently unusual circumstance to nullify the penalty, despite the fact that it is somewhat rare for a court to recognize a "reasonable cause" exception as an "unusual circumstance" that precludes a section 6654(a) penalty. See *In re Carlson,* 126 F.3d 915, 921 (7th Cir. 1997), cert. denied, 523 U.S. 1060, 140 L. Ed. 2d 647, 118 S. Ct. 1388

(1998) (listing cases); *Webster v. United States,* 179 Ct. Cl. 697, 375 F.2d 814 (Ct. Cl. 1967) (finding a reasonable cause exception due to changes in tax code and taxpayer's lack of information as rural landowner). n10

----------Footnotes----------

n10 Adams also argues that the statutory scheme that permits penalties if the taxpayer demonstrates "reasonable cause" or "unusual circumstances" has constitutional implications. She contends, relying on language in Smith, that where a governmental entity has in place a system of "individual exemptions," the failure to extend those exemptions to a case of religious hardship constitutes discrimination on the basis of religious belief. 494 U.S. at 884. The "reasonable cause" exception, according to Adams, is one such "individual exemption," and therefore, the assessment of a penalty against her when she has demonstrated "reasonable cause" is unconstitutional. The concept of "individual exemptions" in Smith is not the same as "reasonable cause" in the I.R.C., and we have little difficulty finding that the imposition of penalties on Adams does not constitute discrimination on the basis of her religion. The exemptions at issue here are uniform and facially neutral; the exemption at issue in Sherbert allowed for special protection for employees opposed to working on Sundays, and allowed the Commission making the determination to take religious and personal beliefs into account; here, the exemptions at issue are uniform and facially neutral. *See Sherbert,* 374 U.S. at 401-03, 406-09. In terms of both statutory interpretation and constitutional interpretation, Adams's definitions of "reasonable cause" and "unusual circumstances" are outside of the bounds of what these terms mean. See *McMahan v. Commissioner,* 114 F.3d 366, 368-69

(2d Cir. 1997) (setting out parameters of reasonable cause exception).

----------End Footnotes----------

We find Adams's arguments appealing, but ultimately unconvincing. She has misconstrued Scott; the focus of the court's analysis in Scott was on the sincerity of the beliefs of the individual in question -- the sincerity of Adams's beliefs is not in question. However, despite the sincerity of those beliefs, her claim has returned this court to a well-established line of cases involving challenges to the collection of taxes on religious grounds. Although Adams's beliefs may be unusual as compared to the general population, the very body of case law relating to war tax protesters [182] indicates that in the realm of tax litigation, she is one of many. As a result, her "compulsion" argument affords her no excuse, as the prior plaintiffs were also compelled by religious belief, but, like Adams, made the difficult decision to act in a manner contrary to law. Moreover, Adams is asking this court to draw a distinction between holding sincerely felt political and religious beliefs and facing the consequences of those beliefs; we have been and continue to be reluctant to make such a distinction. We have noted, in slightly different contexts, that plaintiffs engaging in civil disobedience through tax protests must pay the penalties incurred as a result of engaging in such disobedience. See *Kahn,* 753 F.2d at 1215-16; cf. *Malinowski,* 472 F.2d at 855-58.

We will affirm the decision of the Tax Court.

PRISCILLA M. LIPPINCOTT ADAMS, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Tax Ct. Dkt. No. 15535-96, Docket No. 3437-97

UNITED STATES TAX COURT

110 T.C. 137

March 3, 1998, Filed

DISPOSITION: Decisions will be entered for Respondent.

COUNSEL: Peter Goldberger and James H. Feldman, Jr., for petitioner.

Linda A. Love, for respondent.

JUDGES: FOLEY, JUDGE.

OPINION BY: FOLEY

OPINION: OPINION

FOLEY, JUDGE: Respondent determined the following deficiencies in and additions to petitioner's Federal income taxes:

		Additions to Tax	
Year	**Deficiency**	**Sec. 6651(a)(1)**	**Sec. 6654**
1988	$ 2,111	$ 522	$ 134
1989	3,091	273	---
1992	3,364	160	---
1993	3,489	226	---

1994	3,543	199	25

Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure. The issues for decision are as follows:

1. Whether, pursuant to the Religious Freedom Restoration Act of 1993, petitioner is exempt from Federal income taxes. We hold that she is not.

2. Whether petitioner is liable for additions to tax for failure to file Federal income tax returns and failure to make estimated tax payments. We hold that she is.

The facts have been fully stipulated under Rule 122 and are so found. Petitioner resided in Willingboro, New Jersey, at the time she filed her petition.

Petitioner is a devout Quaker and a member of the Religious Society of Friends, a Quaker organization. Petitioner adheres to the fundamental tenets of Quaker theology, including the belief that the Spirit of God is in every person and that it is wrong to kill or otherwise harm another person. Petitioner's faith dictates that she not voluntarily participate, directly or indirectly, in military activities. Because Federal income taxes fund military activities, petitioner believes that her faith prohibits her from paying such taxes.

Petitioner contends that, pursuant to the Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. 103-141, Sec. 2, 107 Stat. 1488, 42 U.S.C. §2000bb to 2000bb-4 (1994), she is exempt from Federal income taxes. RFRA was enacted in response to *Employment Div., Dept. Of Human Resources v.*

Smith, 494 U.S. 872 (1990). In *Smith*, the Supreme Court held that neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest. Before *Smith*, the Government had to demonstrate that the application of such laws to religious practices was "essential to accomplish an overriding governmental interest," or represented "the least restrictive means of achieving some compelling state interest". *Employment Div., Dept. Of Human Resources v. Smith,* supra at 899 (O'Connor, J., concurring in judgment). In *City of Boerne v. Flores,* 521 U.S., 117 S. Ct. 2157 (1997), the Supreme Court held that RFRA was unconstitutional as applied to State and local governments. The Court, however, has not determined, and the parties do not contend, that RFRA is unconstitutional as applied to Federal law.

RFRA restores the compelling interest test by prohibiting the Government from imposing a substantial burden on the free exercise of religion unless it demonstrates that application of the burden is the least restrictive means of achieving a compelling governmental interest. RFRA, 42 U.S.C. § 2000bb-1(b) (1994); S. Rept. 103-111, at 8, 1993 U.S.C.C.A.N. 1892, 1898. The legislative history accompanying RFRA explicitly states that, in evaluating whether the Government has met the compelling interest test, cases decided prior to *Smith* are applicable, and the test "should not be construed more stringently or more leniently than it was prior to *Smith.*" S. Rept. 103-111, at 8-9 (1993), 1993 U.S.C.C.A.N. 1892, 1898.

Prior to *Smith*, the Supreme Court repeatedly held that neutral, generally applicable tax laws meet the compelling interest test. See, e.g. *Hernandez v. Commissioner,* 490 U.S. 680,699-700 (1989) (stating that the Government had a "broad public interest in maintaining a sound tax system free of myriad exceptions

flowing from a wide variety of religious beliefs"); *United States v. Lee*, 455 U.S. 252, 258-259 (1982) (holding that the Government's "very high" interest in maintaining a comprehensive Social Security system justified denying an Amish employer an exemption from Social Security taxes); see also S. Rept. 103-111 at 5 n.5, 1993 U.S.C.C.A.N. at 1895 (citing the aforementioned decisions). In *United States v. Lee*, the Supreme Court stated:

> The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief. Because the broad public interest in maintaining a sound tax system is of such high order, *religious belief in conflict with the payment of taxes affords no basis for resisting the tax.* *Id.*, at 260; citations omitted; emphasis added.

Thus, while petitioner's religious beliefs are substantially burdened by payment of taxes that fund military expenditures, the Supreme Court has established that uniform, mandatory participation in the Federal income tax system, irrespective of religious belief, is a compelling governmental interest. See *id.*; *Hernandez v. Commissioner, supra*. As a result, requiring petitioner's participation in the Federal income tax system is the only, and thus the least restrictive, means of furthering the Government's interest. *Cf. Steckler v. United States*, No. Civ. A. 96-1054, 1998 WL 28235 (E.D. La., Jan. 26, 1998) (relying on *United States v. Lee* to hold that withholding pursuant to section 3406 was the least restrictive means of furthering the compelling governmental interest of ensuring that all citizens participate in the tax system). Therefore, we hold that RFRA does not exempt petitioner from Federal income taxes. Accordingly, we sustain respondent's determinations. *Cf.*

Babcock v. Commissioner, T.C.Memo. 1986-168 (upholding additions to tax for failure to file and failure to make estimated tax payments where an Amish taxpayer claimed a religious exemption from Federal income taxes).

To reflect the foregoing,

Decisions will be entered for respondent.

UNITED STATES TAX COURT

PRISCILLA M. LIPPINCOTT ADAMS, Petitioner,	)	Docket Nos. 15535-96, 3437-97
v.	)	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

STIPULATION OF FACTS

Pursuant to Tax Court Rule 91 (e) , it is hereby stipulated that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto may be accepted as authentic and are incorporated in this stipulation and made a part hereof; provided, however, that either party has the right to object to the admission of any such facts and exhibits in evidence on the grounds of relevancy and materiality at the time of submission, but not on other grounds unless expressly reserved herein. The truth of assertions within stipulated exhibits may be rebutted or corroborated by evidence within the stipulation of facts.

STIPULATIONS WITH RESPECT TO TAX DEFICIENCIES

1. At the time the petitions in this case were filed, the petitioner had not filed federal income tax returns for the years 1988, 1989, 1992, 1993 and 1994.

2. Petitioner's returns for those years were due to be filed on or before April 15, 1989, April 15, 1990, April 15,

1993, April 15, 1994, and April 15, 1995, respectively.

3. Following the filing of the petitions in this case, the petitioner filed late Federal Income Tax Returns for 1988, 1989, 1992, 1993, and 1994 on March 24, 1997. Copies of these returns are attached as Exhibits l-A, 2-B, 3-C, 4-D and 5-E, respectively.

4. The notices of deficiency (copies of which, including so much of the statement and schedules accompanying the notice as is material, are attached and marked as Exhibits) were mailed to the petitioner on the following dates:

Tax Year	Date of Mailing	Exhibit Designation
1988	April 24, 1996	6-F
1989	April 17, 1996	7-G
1992	April 17, 1996	8-H
1993	April 24, 1996	9-I
1994	November 27, 1996	10-J

5. Petitioner's filing status for each of the aforementioned years was married filing separately. Additionally, on each of the delinquently filed returns, petitioner checked the box indicating that she is married filing separate returns and her spouse itemizes. Accordingly, she is not entitled to the standard deduction for the years 1988, 1989, 1992, 1993, and 1994.

6. For the taxable year 1988, in his notice of deficiency, respondent determined a deficiency in income tax in the amount of $2,111.00, and additions to tax under I.R.C. § 6651(a) (1) and l.R.C. § 6654 in the amounts of $522.00 and $134.00, respectively.

7. On her return for the year 1988, petitioner reported a tax liability of $2,609.00, and on May 5, 1997,

respondent made an assessment of the tax liability as reported by the taxpayer.

8. During the processing of the return, respondent determined that the additions to tax determined under I.R.C. § 6651(a) (l),and § 6654 should be increased to $582.00 and $166.00, respectively, due to the increase in petitioner's tax liability. Additionally, respondent determined that the addition to tax under I.R.C. § 6651(a) (2) should be imposed for petitioner's failure to pay the federal income taxes reported on her return in the amount of $646.00.

9. For the taxable year 1989, in his notice of deficiency, respondent determined a deficiency in income tax in the amount of $3,091.00, and an addition to tax under I.R.C. § 6651(a) (1) in the amount of $273.00.

10. On her return for the year 1989, petitioner reported a tax liability of $3,693.00, and on May 5, 1997, respondent made an assessment of the tax liability as reported by the taxpayer.

11. During the processing of the return, respondent determined that the additions to tax determined under I.R.C. § 6651(a) (1) should be increased to $381.00 due to the increase in petitioner's tax liability. Additionally, respondent determined that the additions to tax under I.R.C. § 6651(a) (2) and § 6654 should be imposed for petitioner's failure to pay the federal income taxes reported on her return and failure to make estimated tax payments in the amounts of $424.00 and $92.00, respectively.

12. For the taxable year 1992, in his notice of deficiency, respondent determined a deficiency in income tax in the amount of $3,364.00, and an addition to tax under I.R.C.§ 6651(a)(l) in the amount of $160.00.

13. On her return for the year 1992, petitioner reported tax liability of $4,050.00, and on May 5, 1997, respondent made an assessment of the tax liability reported by

the taxpayer.

14. During the processing of the return, respondent determined that the additions to tax determined under I.R.C. § 6651(a) (1) should be increased to $299.00 due to the increase in petitioner's tax liability. Additionally, respondent determined that the additions to tax under I.R.C. § 6651(a) (2) and § 6654 should be imposed for petitioner's failure to pay the federal income taxes reported on her return and failure to make estimated tax payments in the amounts of $318.00 and $45.00, respectively.

15. For the taxable year 1993, in his notice of deficiency, respondent determined a deficiency in income tax in the amount of $3,489.00, and an addition to tax under I.R.C.§ 6651(a) (1) in the amount of $226.00.

16. On her return for the year 1993, petitioner reported a tax liability of $4,189.00, and on May 5, 1997, respondent made an assessment of the tax liability reported by the taxpayer.

17. During the processing of the return, respondent determined that the additions to tax determined under I.R.C. § 6651(a)(l) should be increased to $339.00 due to the increase in petitioner's tax liability. Additionally, respondent determined that the additions to tax under I.R.C. § 6651(a)(2) and § 6654 should be imposed for petitioner's failure to pay the federal income taxes reported on her return and failure to make estimated tax payments in the amounts of $271.00 and $51.00, respectively.

18. For the taxable year 1994, in his notice of deficiency, respondent determined a deficiency in income tax in the amount of $3,543.00, and additions to tax under I.R.C. § 6651(a) (1) and I.R.C. § 6654 in the amounts of $199.00 and $25.00, respectively.

19. On her return for the year 1994, petitioner reported a tax liability of $4,285.00, and on May 5, 1997,

respondent made an assessment of the tax liability reported by the taxpayer.

20. During the processing of the return, respondent determined that the additions to tax determined under I.R.C.§ 6651(a) (1) and § 6654 should be increased to $346.00 and $185.00, respectively, due to the increase in petitioner's tax liability. Additionally, respondent determined that the addition to tax under I.R.C. § 6651(a) (2) should be imposed for petitioner's failure to pay the federal income taxes reported on her return in the amount of $64.00.

21. Petitioner agrees that if the Court determines that she is subject to income tax, she is liable for the tax liability reported on her federal income tax returns for each of the years 1988, 1989, 1992, 1993, and 1994.

22. Petitioner agrees that if the Court determines that she is liable for the additions to tax under I.R.C. § 6651(a) (1) for any or all of the tax years at issue, the amount of the additions will be the increased additions to tax, as claimed by respondent pursuant to I.R.C. § 6214(a), as set forth above in ¶8, ¶11, ¶14, ¶17, and ¶20, for each of the respective years 1988, 1989, 1992, 1993, and 1994.

23. Petitioner agrees that if the Court determines that she is liable for the additions to tax under I.R.C. § 6651(a) (2) for any or all of the tax years at issue, the amount of the additions will be the increased additions to tax, as claimed by respondent pursuant to I.R.C. § 6214(a), as set forth above in ¶8, ¶11, ¶14, ¶17, and ¶20 for each of the years 1988, 1989, 1992, 1993, and 1994, respectively.

24. Petitioner agrees that if the Court determines that she is liable for additions to tax under I.R.C. § 6654 for the years 1988 and 1994, the amount of the addition will be the increased addition to tax, as claimed by respondent pursuant to I.R.C. § 6214(a), as set forth above in ¶8 and ¶20, respectively.

25. Petitioner agrees that if the Court determines

that she is liable for additions to tax under I.R.C. § 6654 for the years 1989, 1992, and 1993, the amount of the addition will be the increased addition to tax, as claimed pursuant to I.R.C. § 6214(a), as set forth above in ¶ll, ¶14, and ¶17, respectively.

26. Petitioner has not paid any of her assessed deficiency and income tax liability other than the amounts credited from federal withholding in the amounts of $24.00, $0.00, $2,724.00, $2,684.00, and $2,747.00 for the taxable years 1988, 1989, 1992, 1993, and 1994, respectively.

STIPULATIONS WITH RESPECT TO THE PETITIONER

27. The petitioner, Priscilla Lippincott Adams, resided at 96 Pageant Lane, Willingboro, New Jersey 08046 at the time the petitions in this case were filed. The petitioner's taxpayer identification number is SSN [redacted in Appendix for petitioner's security]. She is a married individual.

28. Priscilla Lippincott Adams' family on her father's side have been Quakers since the Seventeenth Century. Her ancestors emigrated from England to the American colonies in the mid-1600s to escape persecution in England, eventually settling in New Jersey.

29. While Ms. Adams is currently a member of the Haddonfield Monthly Meeting of the Religious Society of Friends ("Quakers") , she grew up in Cropwell Meeting in Marlton, NJ.

30. From 1966-70, Ms. Adams attended Westtown School, a Quaker boarding school in Westtown, Pennsylvania. At this school she learned most intensely about Quakerism, its testimonies, and what those testimonies mean to Members of the Society in their day-to-day life.

31. Following high school, Ms. Adams initially attended Grinnell College. Later she transferred to Syracuse University, where she graduated in 1974 with a degree in Social

Work and Non-Violence.

32. In September 1974, Ms. Adams entered a two-year training program in non-violence in Philadelphia with the Movement for a New Society ("MNS"). MNS advocated Quaker principles of non-violence and simple living as a way to create a more just and peaceful world. It grew out of a Quaker organization known as "A Quaker Action Group."

33. In 1984, Ms. Adams was hired as a consultant by the Philadelphia Yearly Meeting of the Religious Society of Friends ("Yearly Meeting" or "PYM") for its War Tax Concerns Support Committee. In 1985, she was hired by PYM as a salaried employee, with the job title "Peace Field Secretary," a position she continued to hold during the years at issue. As Peace Field Secretary, Ms. Adams works on peace and justice issues with Quakers living in Southern New Jersey.

34. Ms. Adams adheres to the fundamental tenets of Quaker theology, including the belief that there is "that of God" in every person. To her, every person contains the Spirit of God that links all people with each other. For this reason, she believes at the core of her being that the life of each person is precious, and that it is wrong for anybody to harm, maim, or kill another person. She believes that when any person's life is taken, all other people are lessened in some way.

35. Petitioner's faith dictates that she not voluntarily participate, directly or indirectly, in war or other military activities. Because federal income taxes are used by the government in substantial part to fund the military and military activities, she has never voluntarily paid income taxes.

36. When Ms. Adams first began working for PYM as an employee, she claimed on her W-4 form that she was exempt from taxation so that no federal income tax would be withheld from her pay. On April 20, 1989, the IRS sent PYM a letter directing it to disregard Ms. Adams' current and any subsequent W-4 forms and to withhold taxes from her salary as

if she were married and claiming one withholding allowance, unless and until the IRS approved a statement from Ms. Adams which justified a different level of withholding. PYM complied with this IRS directive.

37. In Quaker terminology, a "leading" is a sense of being drawn or called by God in a particular direction, or toward a particular course of action. According to the "Faith and Practice" of PYM, Quakers generally do not recognize an individual's "concern" as a "leading" which justifies action until it has been tested and challenged in a "clearness" process, in which the individual receives guidance, aid and encouragement from other members of the Meeting. A clearness committee is a group of Friends who convene to help another Quaker discern God's leading with respect to a particular issue.

38. PYM has adopted a policy with respect to employees who claim that a leading of the Spirit prevents them from paying taxes that support the military. Under that policy, PYM will set aside and not pay over to the IRS a portion of the federal income tax withheld from the employee's pay, equal to the percentage of the federal budget determined by PYM as going to support of past and present military programs. PYM places the portion of withheld taxes not turned over to the IRS in a trust account. A copy of PYM's policy is attached as Petitioner's Exhibit 11.

39. An employee who takes advantage of PYM's policy of support for conscientious objectors to military taxes receives at the end of the year a W-2 form which lists all money withheld from the employee's wages for federal income tax. That figure includes both money which PYM has paid over to the IRS in the ordinary course, as well as the amount it refuses voluntarily to forward to the IRS.

40. The IRS regularly levies PYM's trust account to obtain the amounts of income tax withheld but not voluntarily paid over, plus penalties and interest, and PYM's bank

surrenders the funds demanded. Petitioner is fully aware that the amounts of tax not voluntarily paid over by PYM can be collected from PYM bank accounts without her participation.

41. Any amount which Ms. Adams calculates would be due to be paid as income taxes with her return, in addition to amounts withheld from her by her employer, she loans at no interest to organizations which she believes are working to create a better world. She has not required these organizations to repay the loans, but might do so if the IRS collected an equal or greater amount of money from her.

42. During the period she has refused to pay federal income taxes voluntarily, Ms. Adams has convened three clearness committees at Haddonfield Monthly Meeting to help her discern God's leading with respect to her tax resistance.

a. She convened the first clearness committee at a date she no longer recalls, but which was between 1984 and 1988, to help her discern whether her refusal to pay taxes voluntarily was "rightly led," i.e., whether it was, in fact, a leading from God. The committee reported back to the Monthly Meeting that Ms. Adams' refusal to pay taxes was indeed a leading of the Spirit.

b. She convened the second clearness committee in the late spring of 1989 to address two issues: (1) Whether she should continue to work for PYM after PYM had been ordered by the IRS to withhold tax money from Ms. Adams' pay, and (2) if she continued to work for PYM, whether she should take advantage of PYM's policy with respect to employees who are war tax resisters, even though it would result in a portion of her taxes being withheld and paid over, and the balance eventually collected. This clearness committee concluded that by continuing to work at PYM and taking advantage of its policy with respect to

war tax resister employees, that Ms. Adams was following a leading from God and not unduly compromising that leading.

c. She convened a third clearness committee on February 15, 1997, to help her discern God's leading with respect to this petition with the Tax Court. While Ms. Adams did not waiver [sic] in her fundamental belief that there is "that of God" in every person, and that it is therefore always wrong to kill another person or to contribute money that will be used to plan or carry out killing, the committee and Ms. Adams discerned that Ms. Adams' practice of not filing tax returns was no longer required by that leading from God. She and her committee reached this conclusion on the understanding that her failure to file would no longer impair the IRS's ability to collect, since the Service already knew where she worked and lived.

43. On or about June 16, 1997, Ms. Adams filed previously unfiled returns for the taxable years 1985, 1986 and 1987.

44. Prior to 1997, Ms. Adams did not file income tax returns (other than when she had first started working), because she believed not only that it would be contrary to her fundamental religious beliefs to pay taxes that supported the military, but also that it would be contrary to those beliefs to assist the IRS in collecting those taxes by providing it with the information required by the tax return form.

45. It is agreed that if Ms. Adams were to testify, her testimony would be that she would voluntarily pay all her federal income taxes if the money she paid were placed in a fund that supported only non-military spending, or if her payments could be earmarked and directed to accounts in the Treasury assigned to the support of non-military expenditures. She would further testify that she is also open to considering, in

consultation with a clearness committee, any other form of accommodation of her beliefs that the United States government were willing to offer her.

46. It is agreed that if Ms. Adams were to testify, her testimony would be that during the years at issue her deeply held religious beliefs precluded her from filing timely returns or voluntarily paying federal income tax, including estimated taxes.

STIPULATIONS WITH RESPECT TO QUAKER HISTORY, THEOLOGY AND THE ORGANIZATION OF QUAKER CONGREGATIONS

47. The Religious Society of Friends is more than 300 years old. Quakerism grew out of British individuals' unrest with requests by their government to participate in activities which the founders of the Society felt to be immoral and irreligious. Included in this list was the unwillingness to swear oaths, since such a practice implied that there would be times, when not under oath, that one may, with impunity, speak something other than truth. Also included in this list was participation in the making of war. Early spokespeople for the group hoped to live in such a way as to "take away the need for all war." This opposition to war is referred to within the Society of Friends as the "Peace Testimony."

48. The Society of Friends is a unique religion in that it has no central governing body, and no dogma or creed to which all members are required to subscribe. Guidelines for belief and behavior are outlined in books of "Faith and Practice" published every few decades by each of the more than 100 regional "Yearly Meetings" of Friends around the world (the equivalent of "annual conferences" in most other Protestant Churches). Consistent with Friends' ideas of "continuing revelation," i.e., that there is a Divine Presence alive in the

world today, through which human beings can receive "updated" understanding of Divine Truth, many portions of Faith and Practice guides are changed as new editions respond to new social change. Hence, it is particularly noteworthy that the peace testimony of George Fox, one of the Society's founders and the leader of seventeenth-century English Friends, has been consistently reprinted in successive local editions of "Faith and Practice" since 1660. This makes the Society of Friends (Quakers) one of the oldest "peace churches," sharing that status with Mennonites and Church of the Brethren.

49. Politically, Quakers have often been conservative, holding strongly to the support of constituted authority, and obeying civil laws. However, where those laws have violated deeply-held beliefs of conscience, Quakers have often stood outside those particular laws, while holding fast to laws which did not violate conscience. In other words, the Quaker tradition has been one of steadfast moral conviction; it has not been one of radical individualism or anarchism. In a 1789 letter to the Philadelphia Yearly Meeting of the Society of Friends (the original of which is held at the Haverford College Quaker Collection), received in 1790, President George Washington wrote:

> Government being, among other purposes, instituted to protect the Persons and Consciences of men from oppression, it certainly is the duty of Rulers, not only to abstain from it themselves, but according to their stations to prevent it in others. . . .
>
> Your principles & conduct are well known to me. . . . I assure you very explicitly that in my opinion the Conscientious scruples of all men should be treated with great delicacy & tenderness, and it is my wish and desire that the Laws may always be as extensively

accomodated to them, as a due regard to the Protection and essential Interests of the Nation may Justify, and permit.

50. The Quaker "conscientious objection" to military service dates back to the 1650s; opposition to war taxes dates back to the 1700s. In recent years, active objection to war taxes has been increasing among Friends.

51. The issue of resisting military taxes hardly arose in the first century of Quaker history. However, from the 1750s until 1800 in this country, although not in Great Britain, there was an active effort to resist such taxes. Throughout the 19th Century until the 1940s, Friends were not as unified about the Peace Testimony as they had been in an earlier day. A new sense of urgency regarding military tax refusal coincided with the beginning of the atomic age, the threat of the Cold War, and a perceived increasing militarism of the United States. Since World War II, taxes on individuals which extensively support military programs have changed in form, magnitude and regularity, making them a more central issue for many Quakers in this country, as well as overseas, as they seek to bring their inner message to bear on the outer world.

52. PYM was established in 1681, making it is one of the oldest bodies of the Religious Society of Friends in the world. The Yearly Meeting has over 12,000 members in 105 "Monthly Meetings" or congregations located in Pennsylvania, New Jersey, and parts of Delaware and Maryland. It employs 45 staff. Its membership gathers once annually in stated session for worship and business. Interim (Representative) Meeting, a smaller body of appointed delegates, meets regularly to carry on the business of the Yearly Meeting when the Yearly Meeting is not in session.

53. All Quaker decisionmaking bodies, including PYM and Representative Meeting, operate by a voteless

process of consensus in which the will of God with respect to a particular matter is sought in the context of worship. A Quaker decision making body will not proceed with an action unless there is substantial "unity" or agreement among the Friends taking part in the decision that the proposed action is in accordance with God's will.

54. The Religious Society of Friends was founded on one distinctive and fundamental religious belief, which it has consistently propounded since its inception in 1650. This is the belief that God gives to every human being who comes into the world a measure of the Spirit through which divine guidance is inwardly received and the conscience enlightened. Every human being has direct access through this "Inner Light" to divine inspiration and guidance for living in accordance with God's will. Those who discern and heed the promptings of this Inner Light in their daily lives are "saved" -- that is, they come into fullness and wholeness of life and right relationship with God and one another. Those who resist, ignore, or disobey this Inner Light, even if they profess religion, are "damned" -- that is, doomed to unhappiness and alienation from God, from themselves, and from one another. Friends believe that the conscience is a vehicle for the Inner Light. Therefore, conscience has a particularly sacred quality for Friends. Obedience to religiously inspired conscience, therefore, is fundamental to the faith of a practicing Friend. To disobey a divine leading as known by one's conscience is equivalent for a Quaker, to disobeying God.

55. For Friends, the immediate guidance of the spirit, corroborated by scripture and tested by the community of faith, has priority over all other claims, even those of the State. The Yearly Meeting's current book of Faith and Practice, its guidebook to faith and order in the religious community, states:

> Obedience to the state is subject to the religious principle that primary allegiance is to God. The state has

> no claim to moral infallibility. If its command appears to be contrary to divine law, Friends can only take prayerful counsel to arrive at a Christian decision. This usually involves testing one's proposed action by the judgment of the Meeting. When the decision is to refuse obedience to a law or order of the state, in accordance with the dictates of conscience, it is usual for Friends to make clear the grounds of their action. If the decision involves incurring legal penalties, Friends generally have suffered willingly and fearlessly for the sake of their convictions.

56. The Religious Society of Friends has consistently maintained, as a matter of direct revelation, corroborated by scripture, that all war and preparation for war are contrary to the will of God and the teachings of Jesus Christ. In 1660, Friends declared:

> We utterly deny all outward wars and strife, and fightings with outward weapons, for any end, or under any pretense whatsoever; this is our testimony to the whole world. The spirit of Christ, by which we are guided, is not changeable, so as once to command us from a thing as evil and again to move unto it; and we do certainly know, and so testify to the world, that the spirit of Christ, which leads us into all Truth, will never move us to fight and war with outward weapons, neither for the kingdom of Christ, nor for the kingdoms of this world.

57. Friends have always regarded participation in war and preparation for war as contrary to the plainest doctrines of the Christian faith. In 1678, Quaker theologian Robert Barclay wrote:

> Whoever can reconcile this, 'resist not evil', with 'Resist violence by force', again, 'Give also thy other cheek', with 'Strike again'; also, 'Love thine enemies', with 'Spoil

> them, make a prey of them pursue them with fire and the sword', or 'Pray for those that persecute you, and those that calumniate you', with 'Persecute them by fines, imprisonments and death itself', whoever, I say, can find a means to reconcile these things may be supposed also to have found a way to reconcile God with the Devil, Christ with Antichrist, Light with Darkness, and good with evil. But if this be impossible, as indeed it is impossible, so will the other be impossible, and men do but deceive both themselves and others, while they boldly adventure to establish such absurd and impossible things.

58. Over its 330-year history, the Religious Society of Friends has consistently called on its members to adhere strictly to the peace testimony, even in the face of punishment or persecution. In 1776, the Yearly Meeting admonished:

> Let not the fear of suffering, either in person or property, prevail on any to join with or promote any work or preparation for war.

59. The following admonition is contained in the current Advices of the Yearly Meeting, which are read as a reminder to Friends of the standards of faith which they seek to uphold:

> Be faithful in maintaining our testimony against all war as contrary to the spirit and teaching of Christ. . . Friends are reminded to live in the virtue of that life and power that takes away the occasion of all wars.

60. As a direct extension of this historic peace testimony, Friends have consistently refused as a matter of religious conscience to pay taxes for purely military purposes. The Quaker founder of Pennsylvania, William Penn, refused to send money to England in 1711 for a war in what is now Canada, stating:

> No man can be true to God and false to his own

> conscience, nor can he extort from it a tribute [i.e., a tax] to carry on any war, much less offensive, nor ought true Christians pay for it.

61. In 1780, the Yearly Meeting declared:

> [I]t [is] our unanimous sense and judgment, that a living concern for the advancement of our testimony to the peaceable kingdom of Christ, by refraining from such compliances as evidently tend to war and bloodshed, still continues to spread in many minds, and a fervent desire hath prevailed amongst us, that according to the advices given forth by this meeting at sundry times . . . respecting the payment of taxes, selling of property for the use of the armies, that the members of our religious society be again exhorted strictly to attend to the monitions of divine Grace, and carefully guard against suppressing them either in themselves or others, that so they may be preserved in a conduct consistent with our holy profession....

62. In its Rules of Discipline, printed in 1825, the Yearly Meeting stated:

> It is the sense and judgment of this meeting, that it is inconsistent with our religious testimony and principles, for any Friends to pay a fine or tax levied on them on account of their refusal to serve in the militia, although such fine or imposition may be applied towards defraying the cost of civil government; and where deviations in this respect occur tender dealing and advice should be extended to the party in order to their convincement and restoration; and if this proves ineffectual, monthly meetings [the congregation] should proceed to monthly testify against them [*i.e.*, disown them].

63. In more recent decades, Friends have not all reached agreement regarding non-payment of taxes for a

mixture of military and non-military purposes (such as the federal income tax). Most Friends do pay such taxes. Nevertheless, the Yearly Meeting has consistently supported refusal to pay the military portion of such taxes as a proper individual expression of the peace testimony.

64. Some Friends refuse to pay any portion of their federal income taxes on the grounds that all tax payments go into the general fund and thus to substantial support of the military. The Yearly Meeting supports this position as a proper, Divinely-led individual expression of the peace testimony as well.

65. The Yearly Meeting considers it a sacred duty to support the conscientious actions of its individual members, especially in such historic witnesses as the peace testimony. The Yearly Meeting believes that to withdraw such support, for any reason, would directly violate one of its most fundamental religious principles: the sanctity of obedience to the inner guidance of the Spirit as revealed in the individual conscience and confirmed by the discernment of the faith community.

66. In recent years, Friends have felt an increasing burden of conscience as they have watched the portion of every federal tax dollar that goes to military expenditures increase to the point where it represents more than half the operating budget of the federal government (including veterans benefits and interest on that portion of the federal debt directly attributable to past wars). The Friends Committee on National Legislation in Washington, D.C., estimates that the average American family now pays more than $1,500 a year in federal taxes for military purposes. This has placed a heavy burden of conscience on many Friends.

67. During the last 30 years, the Philadelphia Yearly Meeting has formally adopted a series of policies to cope with the conflicts that can arise between the obligations of the federal tax system and the fundamental religious beliefs and practices

of PYM members. In 1968, the Yearly Meeting minuted that "Friends were in complete accord that those who in good conscience are called to refuse to pay taxes for war should be upheld in their action," and directed Representative Meeting "to cooperate fully and sensitively with any . . . employee who wishes to refuse to have his withholding tax forwarded to IRS." In 1970 the Yearly Meeting reaffirmed that "refusal to pay the military portion of taxes is an honorable testimony, fully in keeping with the history and practices of Friends." The Yearly Meeting further noted:

> We gladly pay the civilian part of our taxes, but many have reached a point in their conscience which prevents or makes difficult the payment of the military portion . . . . We warmly approve of people following their conscience, and openly approve civil disobedience in this matter under Divine compulsion. We ask all to consider carefully the implications of paying taxes that relate to war-making.

68. In 1979, the Yearly Meeting went a step further declaring:

> Within the framework of respect for individual conscience, we call upon those Friends who feel ready to do so to begin now to refuse to pay taxes for military purposes. We call upon all Friends to continue to search themselves deeply on the question of their responsibility to separate themselves from preparations for war. . . .We support with spiritual, moral, legal and material aid . . . those Friends who are led to refuse payment of war taxes.

69. In 1984, noting that "the conscription of our money has superseded in part the conscription of the people in supporting modern militarism," the Yearly Meeting minuted the following:

> Friends are uneasy in conscience that a substantial

> portion of their dollars goes for military purposes, and many Friends feel that paying these military taxes is not consistent with our Peace testimony. . . . We will continue to seek legislative, administrative, and judicial avenues for recognition of conscientious objection for those who cannot in good conscience allow their taxes to go toward military purposes. We support all those who are called to civil disobedience by religious conscience.

In 1988, the Yearly Meeting took actions on military tax refusal which included a formal reaffirmation of its policy of refusing to obey IRS levies on salaries of its employees who are military tax refusers.

70. The minutes of support for the petitioner's position from the Interim Meeting of the Philadelphia Yearly Meeting of the Religious Society of Friends, the War Tax Concerns Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends, the Cropwell Monthly Meeting of the Religious Society of Friends, the Huntingdon Meeting of the Religious Society of Friends, the Haddonfield Monthly Meeting of the Religious Society of Friends, the Unami Monthly Meeting of the Religious Society of Friends, are attached hereto as Petitioner's Exhibit 12.

71. The following articles of the United States, statutes, rules of court, and administrative procedures were adopted, at least in part, as accommodations to Quaker beliefs and religious practices: In the U.S. Constitution [art. II, 201, cl. 8; art. VI, cl. 3], 28 U.S.C. § 1746, T.C. Rule 142(a), adopting Fed.R.Evid. 603, 50 U.S.C. Aptx. § 456(j). In addition, by administrative action of the Treasury Department, Civilian Public Service Bonds were recognized in place of War bonds during World War II.

MISCELLANEOUS STIPULATIONS

72. All taxes collected by the respondent are placed in the general fund of the United States Treasury, a substantial portion of which funds military expenditures.

73. The government has a compelling interest in collecting taxes.

74. During the years at issue, petitioner was aware of the obligations imposed under the Internal Revenue Code to file federal income tax returns and to pay income tax.

Date: October 16, 1997 Date: October 16, 1997

/s/
PETER GOLDBERGER, ESQ.
Counsel for Petitioner
Tax Court Bar No. GP0083
50 Rittenhouse Place
Ardmore, PA 19003-2276

STUART L. BROWN
Chief Counsel
Internal Revenue Service

/s/
LINDA A. LOVE
Attorney
Tax Court Bar No. LL0320
Mellon Independence Center
701 Market Street
Suite 2200
Philadelphia, PA 19106
Telephone: (215) 597-3442

/s/
JOSEPH M. ABELE
Assistant District Counsel
Tax Court Bar No. AJ0012

UNITED STATES TAX COURT
Washington, D.C. 20217

PRISCILLA M. LIPPINCOTT ADAMS,	)	
Petitioner,	)	
	)	Docket No. 15535-96
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

DECISION

Pursuant to the determination of this Court as set forth in 110 T.C. No. 13 filed March 3, 1998, and set for the reasons state therein, it is

ORDERED AND DECIDED that petitioner is liable for deficiencies in Federal income tax and additions to tax for the taxable years as follows:

Year	Deficiency	Sec. 6651 (a)(1)	Additions to tax Sec.6654
1988	$2,111	$522	$134
1989	3,091	273	--
1992	3,364	160	--
1993	3,489	226	--

(Signed) Maurice B. Foley

Maurice B. Foley
Judge

Entered: Mar 5 1998

UNITED STATES TAX COURT
Washington, D.C. 20217

PRISCILLA M. LIPPINCOTT ADAMS,	)	
Petitioner,	)	
	)	Docket No. 3437-97
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

DECISION

Pursuant to the determination of this Court as set forth in 110 T.C. No. 13 filed March 3, 1998, and for the reasons stated therein, it is

ORDERED AND DECIDED that petitioner is liable for a deficiency in Federal income tax and additions to tax for the taxable year 1994 as follows:

		Additions to tax	
Year	Deficiency	Sec. 6651(a)(1)	Sec. 6654
1994	$3,543	$199	$25

(Signed) Maurice B. Foley

Maurice B. Foley
Judge

Entered: Mar 5 1998

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. [illegible]7200

PRISCILLA M. LIPPINCOTT ADAMS,
Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee

ON APPEAL FROM THE UNITED STATES TAX COURT
(Docket Nos. 96-15535 and 97-3437)
Tax Court Judge: Honorable Maurice B. Foley

Present: BECKER, Chief Judge, SLOVITER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, NYGAARD, ALITO, ROTH, LEWIS, McKEE, RENDELL, Circuit Judges, and DEBEVOISE, District Judge*

SUR PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by appellant having been submitted to the judges who participated in the decision of this court, and to all the other available circuit judges in

---

* Hon. Dickinson R. Debevoise, U.S. Senior District Judge for the District of New Jersey, sitting by designation; vote limited to rehearing before the original panel only.

active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition. for rehearing is DENIED.

BY THE COURT:

/S/ M.O. Rendell
Circuit Judge

Dated: June 10 1999

Section 6651 of the Internal Revenue Code provides, in pertinent part:

> (a) **Addition to the tax.** In case of failure --
>
> (1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof) ... on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; ....
>
> (b) **Penalty imposed on net amount due.** For purposes of --
>
> (1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return,* * * *

Section 6654 of the Internal Revenue Code provides, in pertinent part:

6654. **Failure by individual to pay estimated income tax.**

> (a) **Addition to the tax.** Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined by applying-
>
> (1) the underpayment rate established under section 6621,
>
> (2) to the amount of the underpayment,

(3) for the period of the underpayment.

* * * *

(e) **Exceptions.**

* * *

(3) **Waiver in certain cases.**

(A) **In general.** No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

* * * *

The Treasury Regulations provide, in pertinent part:

301.6651-1(c) **Failure to file tax return or to pay tax.**

* * * *

(c) Showing of reasonable cause. (1) Except as provided in subparagraphs (3) and (4) of this paragraph (b), a taxpayer who wishes to avoid the addition to the tax for failure to file a tax return or pay tax must make an affirmative showing of all facts alleged as a reasonable cause for his failure to file such return or pay such tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. * * * If the district director, the director of the service center, or, where applicable, the Regional Director, Bureau of Alcohol, Tobacco and Firearms, determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. * * * *

26 C.F.R. 6651-1(c).

1218 **Policies of the Internal Revenue Service Handbook** (6-5-89)

(1) All Service policy statements are contained in the Handbook, Policiesof the Internal Revenue Service, IRM 1218, numbered to correspond to the Manual Part to which the policy has principal application. However, thepolicy statements apply to all Service personnel and activities. * * *

P-2-7 (Approved 12-29-70) **Reasonable cause for late filing of return or failure to deposit or pay taxwhen due.**

Any sound reason advanced by the taxpayer as the cause for delay infiling a return, making deposits under the Federal Tax Deposit System, orpaying a tax when due, will be carefully analyzed to determine whether theapplicable penalty should be asserted. Examples of sound causes for delaywhich, if established, will be accepted as reasonable cause are shown below.

(1) Death or serious illness of the taxpayer or a death or seriousillness in his/her immediate family ....
(2) Unavoidable absence of the taxpayer ....
(3) Destruction by fire or other casualty of the taxpayer's place ofbusiness or business records. * * *

Other explanations may be acceptable Acceptable explanations of delinquency are not limited to the examplesgiven above, since any reason for delinquency in filing or making depositsor payments which establishe[s] that the taxpayer exercised ordinarybusiness care and prudence but was nevertheless unable to comply within theprescribed time will be accepted as reasonable cause. * * * *

5172 Penalties
5172.1 General
5172.11 Purpose (5-11-89)

(1) The purpose of pepnalties is to foster voluntary

complance[. T]o actas a deterrent, penalies must be understood an dexplained to the public.Collection personnel must advise taxpayers of penalties during contactsconcerning delinquency issues. * * * *
(6) The reasonable cause criteria set out below provides [sic] for non-assertion or abatement, but each case must be judged on available facts. Employees making assertion/abatement determinations must also apply theconcept of equal and fair treatment of all taxpayers. Ignorance of the lawshould not be presumed as reasonable cause, but may be considered along withother facts (i.e.[,] first-time filers, first-time FTD users, etc.).Taxpayers must evidence ordinary business care and prudence in explainingreasonable cause factors, and each case must be judged on it's [sic] own merits. * * * *

5172.12 Reasonable Cause Criteria (10-31-89)

(1) The following guidelines, as appropriate, will be applied whenpenalties are not be to be asserted or are to be abated due to reasonable cause: (a) Death or serious illness of the taxpayer or a death or seriousillness in his/her immediate family. ... (b) Unavoidable absence of the taxpayer. ... (c) Destruction by fire, other casualty or civil disturbance of thetaxpayer's residence, place of business or business records. * * * *

120.1.1.3.1 Reasonable Cause (8-20-98)

(1) Reasonable cause is based on all the facts and circumstances in eachsituation and allows the Service to provide relief for a penalty that wouldotherwise be assessed. Reasonable cause relief is generally granted whenthe taxpayer exercises ordinary business care and prudence in determiningtheir [sic] tax obligations but is unable to comply with those obligations. * * *
(3) Reasonable cause relief is not available for all penalties; however,other exceptions may apply. 1. For those penalties where reasonable cause can be considered, anyreason which establishes that the

taxpayer exercised ordinary business careand prudence, but was unable to comply with a prescribed duty within theprescribed time, will be considered. * * *
(5) Taxpayers have reasonable cause when their conduct justifies the nonassertion or abatement of a penalty. Each case must be judgedindividually on the facts and circumstances at hand. * * *
(6) Reasonable cause does not exist if, after the fats and circumstancesthat explain the taxpayer's noncompliant behavior cease to exist, thetaxpayer fails to comply with the tax obligation within a reasonable period of time.

120.1.1.3.1.1 Standards (8-20-98)

(1) Any reason that establishes a taxpayer exercised ordinary businesscare and prudence but was unable to comply with the tax law may beconsidered for penalty relief. * * * *

120.1.1.3.1.2 Ordinary Business Care and Prudence (8-20-98)

(1) Ordinary business care and prudence includes making provision forbusiness obligations to be met when reasonable foreseeable events occur. Ataxpayer may establish reasonable cause by providing facts and circumstancesshowing the taxpayer exercised ordinary business care and prudence (taking that degree of case that a reasonably prudent person would exercise), but nevertheless was unable to comply with the law. * * * *

Supreme Court, U.S.
FILED
NOV 19 1999
OFFICE OF THE CLERK

No. 99-798

In The

Supreme Court of the United States

PRISCILLA M. LIPPINCOTT ADAMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF AMERICAN FRIENDS SERVICE COMMITTEE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

ARLIN M. ADAMS*
**Counsel of Record*
NANCY WINKELMAN
BRUCE P. MERENSTEIN
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2000
Attorneys for Amicus Curiae American Friends Service Committee

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST OF AMICUS CURIAE ... 1

STATEMENT OF THE CASE 6

SUMMARY OF THE ARGUMENT 6

ARGUMENT 8

I. THE IRS'S DENIAL OF A DISCRETIONARY WAIVER OF PENALTIES FOR RELIGIOUS-BASED FAILURE TO FILE RETURNS OR TO PAY INCOME TAXES IMPAIRS THE FREE EXERCISE OF RELIGION 8

II. IMPOSITION OF PENALTIES FOR RELIGIOUS-BASED NONCOMPLIANCE WITH THE TAX LAWS VIOLATES THE RELIGIOUS FREEDOM RESTORATION ACT, AS IT IS NOT THE LEAST RESTRICTIVE MEANS OF ACCOMPLISHING A COMPELLING GOVERNMENTAL INTEREST IN TAX COLLECTION 12

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES

American Friends Serv. Comm. Corp. v. Thornburgh, 961 F.2d 1405 (9th Cir. 1991) 13

American Friends Serv. Comm. v. United States, 368 F. Supp. 1176 (E.D. Pa. 1973), *rev'd on other grounds*, 419 U.S. 7 (1974) (per curiam) 3, 14-15

Cheek v. United States, 498 U.S. 192 (1991) 10

Employment Div. v. Smith, 494 U.S. 872 (1990) 7, 8, 9, 12, 13

Fran Corp. v. United States, 164 F.3d 814 (2d Cir. 1999) 10

Slodov v. United States, 436 U.S. 238 (1978) 9, 15

United States v. Boyle, 469 U.S. 241 (1985) 9, 11

United States v. Lee, 455 U.S. 252 (1982) 13, 14

United States v. Philadelphia Yearly Meeting of the Religious Soc'y of Friends, 753 F. Supp. 1300 (E.D. Pa. 1990) 10, 13

United States v. Pomponio, 429 U.S. 10 (1976) (per curiam) 9

CONSTITUTION

U.S. Const. amend. I. 3, 7, 11

STATUTES

18 U.S.C. § 3571 5

26 U.S.C. § 3402 .....5, 6

TABLE OF AUTHORITIES – Continued

Page

26 U.S.C. § 3403 5

26 U.S.C. § 6651 ..... 9, 11

26 U.S.C. § 6656 ..... 5, 9

26 U.S.C. § 6671 5

26 U.S.C. § 6672 ..... 5, 9, 10

26 U.S.C. § 7202 ..... 5, 9, 10

26 U.S.C. § 7421(a) 3

42 U.S.C. §§ 2000bb *et seq.* 7-8, 12, 13, 16

REGULATIONS

26 C.F.R. § 301.6651-1 ..... 7, 9

26 C.F.R. § 301.6656-1 7

OTHER AUTHORITIES

Roland H. Bainton, *Here I Stand: A Life of Martin Luther* (1978) 10

Howard H. Brinton, *Friends for 300 Years* (2d prtg. 1964) 2

Peter Brock, *The Quaker Peace Testimony: 1660 to 1914* (1990) 2

Stanley Hauerwas, *The Peaceable Kingdom: A Primer in Christian Ethics* (1983) 10

Internal Revenue Manual (CCH) § 120.1 (1998) 10

Internal Revenue Manual (CCH) § 5172.12 (1989) 10

TABLE OF AUTHORITIES – Continued

Page

John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom* (1998)..... 2

Religious Freedom Peace Tax Fund Act, H.R. 2660, 105th Cong. (1998) 15

S. Rep. No. 103-111 (1993) 12

D. Elton Trueblood, *The People Called Quakers* (1966) 2

BRIEF OF AMERICAN FRIENDS SERVICE COMMITTEE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

This brief of the American Friends Service Committee is filed with the consent of the parties.[1] The letters expressing consent have been filed with the Clerk of Court.

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae American Friends Service Committee ("AFSC") is a Quaker organization, whose staff and volunteers work in this country and throughout the world to provide humanitarian aid and for social justice and peace. AFSC has an acute interest in this case, as a Quaker organization with a long history of peace advocacy and as the employer of a number of Quakers engaged in "peace testimony" through war tax refusal. The Quaker peace testimony consists of opposition to war and the promotion of nonviolent means for resolving conflicts, *see* Pet. App. A38-39, A43, and is a fundamental aspect of the Quaker faith and of AFSC's mission, *see id.* A42-43.

Objection to taxes used for military purposes is a longstanding method for Quakers to express their opposition to war and violence. As early as 1670, shortly after

[1] This brief was not authored in whole or in part by counsel for either party, and no monetary contribution was made in support of the preparation or submission of this brief by any person or entity other than *amicus* and its counsel.

the founding of the Religious Society of Friends (or Quakers), some Quakers in England objected to the voluntary payment of general taxes that were used, in part, to fund England's war with the Dutch. *See* Peter Brock, *The Quaker Peace Testimony: 1660 to 1914*, at 185 (1990). This war tax resistance was (and remains) only one component of Quakers' strict adherence to the peace testimony, even in the face of punishment or persecution. In this country, as early as the beginning of the 1700s, some Pennsylvania Quakers refused to pay taxes to support war preparations. Although Quakers disagreed over the propriety of refusing to pay taxes, war tax refusal continued to spread and grow in the colonies until the time of the American Revolution. *See id.* at 186-90.

By the time of AFSC's founding in 1917, war tax refusal was a well-established means for many Quakers to fulfill their peace testimony. AFSC itself has its roots in the Quaker peace testimony, as it was founded during World War I to provide conscientious objectors with an opportunity to assist civilian victims of the war. *See* Howard H. Brinton, *Friends for 300 Years* 172 (2d prtg. 1964).[2] The organization has continued to work for peace, through education and activism, over the past eight decades. AFSC has frequently been recognized for its unwavering commitment to peace and nonviolence. *See* D. Elton Trueblood, *The People Called Quakers* 257 (1966).

---

[2] In fact, Quakers were one of the few denominations specifically included in conscientious-objection legislation passed by Congress in 1917. *See* John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom* 222 (1998).

AFSC's peace mission is driven by the belief that conflicts can be resolved through nonviolent means and by the guiding principle that all people are worthy of dignity and respect.

On the basis of these principles, AFSC considered a policy on war tax refusal as early as 1963. In late 1967, AFSC formally approved a plan to challenge its obligation to deduct (and remit to the federal government) taxes from the wages of employees who objected to the use of their tax dollars for war and war preparation.[3] AFSC's longstanding commitment to accommodating its employees' religious consciences while fulfilling its legal obligations under the federal tax system is evidenced by this challenge to the tax withholding method, in *American Friends Service Committee v. United States*. That challenge led to a federal district court holding that "the withholding method of collecting the federal income taxes of [two AFSC employees] violates their First Amendment rights to the free exercise of their religion." 368 F. Supp. 1176, 1184 (E.D. Pa. 1973), *rev'd on other grounds*, 419 U.S. 7 (1974) (per curiam). Although this Court reversed the district court's final order as contrary to the Anti-Injunction Act, 26 U.S.C. § 7421(a), it did not pass on AFSC's or its employees' free exercise argument.

Ten years later, AFSC affirmed once again its policy of honoring employees' requests that it not voluntarily

---

[3] In the early 1970s, AFSC chose not to adopt a corporate policy of tax refusal, but reaffirmed its commitment to assisting employees whose consciences dictated that they not voluntarily pay federal taxes that funded war preparations.

make war-related payments to the IRS from taxes withheld from wages. In January 1996, AFSC adopted its current policy with regard to war tax refusers.

The current policy requires openness in all dealings with the IRS, that neither the employee/tax refuser nor AFSC profit from the tax refusal, and that a portion of tax refusers' withholdings that equal the percentage of the federal budget that is not used for military purposes be submitted to the IRS, with the remainder placed in escrow. The policy provides that AFSC is to notify the IRS of the amounts placed in the escrow accounts and that these funds, with interest, are to be paid to the IRS when the tax refuser has assurance that such funds will not be used for military purposes. *Amicus* AFSC is not itself a religious tax objector. Rather, as a matter of religious conviction, the organization supports its employees' exercise of their religious consciences, particularly when those actions spring from the same principles on which AFSC was founded, and which it continues to serve.

The current AFSC policy represents the organization's best effort to reconcile its commitment to further its employees' expression of religious conscience while meeting its legal obligations as an employer under the federal tax system. Recent reaffirmation of this policy followed extensive discussion and debate among the organization's board and members, and was based on the belief that the current policy accommodates AFSC employees' peace testimony, while ensuring that neither these employees nor AFSC benefits in any way from a religious-based refusal to pay federal taxes.

Although AFSC receives no pecuniary or material benefit from its accommodation of employees' tax refusal, it is nonetheless subject to a number of severe penalties under the Internal Revenue Code for its actions, as are the employees themselves who engage in tax refusal. Under I.R.C. §§ 3402(a)-3403, AFSC is required to withhold a portion of its employees' wages for federal income taxes and is liable for payment of this withheld amount to the IRS.

AFSC's escrowing of a portion of the amount withheld from employee/tax refusers potentially subjects it to civil penalties under I.R.C. §§ 6656 and 6672. Section 6656 provides for a penalty of as much as 15 percent of the amount not deposited with the government "unless it is shown that such failure is due to reasonable cause and not due to willful neglect." I.R.C. § 6656(a), (b)(1) (1994). Section 6672 imposes a penalty equal to the full amount of taxes underpaid by an employer if such employer "willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof." *Id.* § 6672(a). This penalty can even be applied to "responsible" individual officers and employees of AFSC. *See id.* § 6671(b).

Willful failure to collect or pay over taxes also can lead to felony prosecution and, upon conviction, a fine of up to $500,000 and five years' imprisonment. *See id.* § 7202; 18 U.S.C. § 3571(c)(3). As discussed below, IRS regulations, as well as the statutes cited above, allow for discretionary waivers of each of these civil penalties, and prosecutorial discretion ensures that not all technical violators of § 7202 will be subjected to criminal sanctions.

AFSC has an interest, anchored in its peace mission and its Quaker roots, in ensuring that its employees can fulfill their peace testimony without putting the organization or its board members at risk of harsh financial or criminal sanctions. The Third Circuit's decision in this case leaves AFSC – which is headquartered in Philadelphia – even more vulnerable to the penalties outlined above and jeopardizes its ability to fulfill its historic peace mission. By granting Petitioner's petition for a writ of *certiorari* and holding that the imposition of penalties or fines against a religious-based war tax refuser violates either the First Amendment's Free Exercise Clause or the Religious Freedom Restoration Act, or both, this Court can ensure that AFSC and similar religious organizations are able to continue working toward the longstanding Quaker goals of peace and nonviolence, without fear of unjust and unjustified penalties.

STATEMENT OF THE CASE

Amicus adopts the statement of the case in the petition for a writ of *certiorari*.

SUMMARY OF THE ARGUMENT

Employers such as *amicus* AFSC are required by I.R.C. § 3402 to withhold federal income taxes from their employees' wages. Failure to withhold and forward to the IRS the appropriate portion of wages subjects an employer to fines and other penalties. Similarly, an individual taxpayer who fails to pay the required federal

income tax or to file a tax return is subject to financial and criminal penalties. However, in the case of both individual taxpayers and employers, these fines and penalties may be waived or Respondent can exercise discretion in not pursuing these sanctions. *See* 26 C.F.R. §§ 301.6651-1(c), 301.6656-1(b) (1999). Petitioner's present petition does not challenge the government's authority to collect from her the income taxes that she owes, through a levy or other means permitted by law. Nor does she contest the government's authority to collect statutory interest on her unpaid tax obligations. What she disputes, under the Free Exercise Clause and the Religious Freedom Restoration Act, is the government's ability to impose punitive sanctions on her, in the form of a discretionary penalty, for exercising her deeply-held religious convictions by not voluntarily complying with a tax system that supports war preparation.

In *Employment Division v. Smith*, this Court reiterated the longstanding requirement under the Free Exercise Clause that individualized exemptions from laws of general applicability – such as the tax laws – be available to religious objectors to the same extent as such exemptions are offered to those unable to comply with these laws for non-religious reasons. *See* 494 U.S. 872, 884 (1990). The failure of Respondent to grant a discretionary waiver of tax penalties in the present case, in which the Petitioner's noncompliance is based entirely on the exercise of a fundamental religious belief, constitutes a violation of the Free Exercise Clause.

Moreover, the Religious Freedom Restoration Act prohibits the federal government from substantially

burdening a person's exercise of religion unless the government proves that it must do so to further a compelling interest and that it is furthering this interest through the means that are least restrictive of the person's exercise of religion. In this case, the Tax Court found that the payment of federal income taxes that fund military activities substantially burdens Petitioner's exercise of religion. Pet. App. A34. Therefore, to apply the wage withholding laws permissibly to Petitioner (or similarly situated religious objectors), the government must prove that it has a compelling interest in enforcing this collection method against Petitioner through the imposition of fines or other sanctions, and that this method of enforcement is the least restrictive of Petitioner's exercise of religion. In this case, the government offered no evidence in support of its burden and, in fact, there is no indication that the punitive sanctions of the Internal Revenue Code will accomplish – or even advance – the government's goal of encouraging voluntary compliance with the federal income tax withholding system.

ARGUMENT

I. THE IRS'S DENIAL OF A DISCRETIONARY WAIVER OF PENALTIES FOR RELIGIOUS-BASED FAILURE TO FILE RETURNS OR TO PAY INCOME TAXES IMPAIRS THE FREE EXERCISE OF RELIGION.

In *Employment Division v. Smith*, this Court reiterated the holding of earlier cases that "where the State has in place a system of individual exemptions, it may not

refuse to extend that system to cases of 'religious hardship' without compelling reason." 494 U.S. at 884. Under the Internal Revenue Code, both individual taxpayers and employers are subject to substantial financial penalties and possible criminal prosecution for failure to pay federal income taxes or to file returns.

Many of these penalties, however, implicitly or explicitly authorize "individual exemptions." Some penalties are limited to cases of "willful" failures to pay taxes. *See, e.g.*, I.R.C. § 6672 (providing for 100% penalty for willful failure to "truthfully account for and pay over" taxes withheld from employees' wages); *id.* § 7202 (providing criminal penalties for same); *see also Slodov v. United States*, 436 U.S. 238, 254 (1978) (holding that "willfulness" under § 6672 requires "personal fault"); *United States v. Pomponio*, 429 U.S. 10, 12 (1976) (per curiam) (holding that "willful" violation under criminal tax law is "a voluntary, intentional violation of a known legal duty" (internal quotation omitted)). For other penalties, explicit exemptions are provided in the statute (and accompanying regulations) for underpayment of taxes or failure to file tax returns due to "reasonable cause" and not "willful neglect." *See, e.g.*, I.R.C. §§ 6651, 6656.

Under IRS regulations and case law, "reasonable cause" has been defined as an inability to pay the required taxes despite the exercise of "ordinary business care and prudence." 26 C.F.R. § 301.6651-1(c) (1999); *see also United States v. Boyle*, 469 U.S. 241, 246 (1985). Reasonable cause is determined on a case-by-case basis. Situations which may constitute "reasonable cause" include death or serious illness in a taxpayer's immediate family or destruction of the taxpayer's residence, *see* Internal

Revenue Manual (CCH) § 5172.12 (1989), § 120.1 (1998), a bona fide dispute over the law's requirements, *see United States v. Philadelphia Yearly Meeting of the Religious Soc'y of Friends*, 753 F. Supp. 1300, 1305 (E.D. Pa. 1990),[4] and even financial difficulty of an employer who failed to remit taxes withheld from employees' wages, *see Fran Corp. v. United States*, 164 F.3d 814, 818-19 (2d Cir. 1999).

The government has stipulated that Petitioner's religious faith prevents her from voluntarily paying federal income taxes that would be used to fund military activities, and that prior to 1997 she was "precluded" from filing tax returns. Pet. App. A37-38.[5] The government has not claimed that Petitioner has not exercised ordinary

---

[4] A bona fide dispute over the law's requirements is also relevant to the issue of willfulness. In *Cheek v. United States*, this Court held that willfulness, which is required for a violation of §§ 6672 or 7202, is not present when a taxpayer acts under "a good-faith belief that he was not violating any of the provisions of the tax laws." 498 U.S. 192, 202 (1991). As discussed *infra* Part II, AFSC maintains a good-faith belief that RFRA requires the IRS to accommodate AFSC employees' religious-based objections to payment of federal income taxes that support military activities. A failure to grant *certiorari* in this case could potentially impair AFSC's ability to rely on that belief, at least within the Third Circuit.

[5] "Those committed to living faithfully do not have to decide constantly whether to be faithful or not. They simply are faithful." Stanley Hauerwas, *The Peaceable Kingdom: A Primer in Christian Ethics* 129 (1983). This insight is perhaps most famously expressed in the words of Martin Luther to his inquisitors at the Diet of Worms in 1521: "[M]y conscience is captive to the Word of God. I cannot and will not recant anything, for to go against conscience is neither right nor safe. . . . Here I stand, I cannot do otherwise." Roland H. Bainton, *Here I Stand: A Life of Martin Luther* 144 (1978).

business care and prudence in determining whether to pay her income taxes voluntarily or to file tax returns. Therefore, in the same way that a family member's death, a natural disaster or financial hardship constitutes reasonable cause not to pay one's taxes voluntarily or to file a timely return, Petitioner's *inability* to pay taxes that fund military activities without violating her deeply-felt religious beliefs constitutes reasonable cause. *Cf. Boyle*, 469 U.S. at 248 n.6 ("The principle underlying the IRS regulations and practices [is] that a taxpayer should not be penalized for circumstances beyond his control . . . ."); *id.* at 253 (Brennan, J., joined by Marshall, Powell & O'Connor, JJ., concurring) (noting that imposition of the "harsh penalty" of I.R.C. § 6651 might not be appropriate if the taxpayer was "unable" to meet the statute's standard of ordinary business care and prudence). The failure of the IRS to waive the penalties in this situation constitutes an abridgement of Petitioner's free exercise of religion in violation of the First Amendment.

Amicus AFSC urges this Court to rectify Respondent's Free Exercise violation by granting the petition for a writ of *certiorari* and holding that religious-based reasonable cause for failure to voluntarily file an income tax return or to pay estimated tax must be given the same treatment as non-religious reasons for failure to comply. By clarifying this constitutional standard in the income-tax context, the Court will allow *amicus* to continue its mission of working for peace, without violating its employees' religious consciences or subjecting *amicus* itself or its leaders to harsh civil and criminal penalties.

II. IMPOSITION OF PENALTIES FOR RELIGIOUS-BASED NONCOMPLIANCE WITH THE TAX LAWS VIOLATES THE RELIGIOUS FREEDOM RESTORATION ACT, AS IT IS NOT THE LEAST RESTRICTIVE MEANS OF ACCOMPLISHING A COMPELLING GOVERNMENTAL INTEREST IN TAX COLLECTION.

The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb *et seq.*, was enacted in response to this Court's decision in *Employment Division v. Smith*. *See* S. Rep. No. 103-111, at 2 (1993). *Amicus* AFSC strongly supported the effort to pass RFRA in order to restore a proper balance between government flexibility and religious freedom. Congress's intent in passing RFRA was to ensure that individuals' exercise of religion was not substantially burdened by government, whether the burden arose from the direct targeting of religion (or a particular religion) or from laws of general applicability that incidentally burdened the exercise of religion. *See id.* at 8-9; 42 U.S.C. § 2000bb-1(a) (1994).

The statute includes an exception, however, which allows government to substantially burden the exercise of religion if it "demonstrates" that doing so furthers a compelling governmental interest and there is no less restrictive means of furthering that interest. *See id.* § 2000bb-1(b). Moreover, the statute expressly defines the term "demonstrates" as placing on the government "the burdens of going forward with the evidence and of persuasion" regarding the existence of a compelling interest that cannot be served through less restrictive means. *Id.* § 2000bb-2(3).

Between the time of the *Smith* decision and the passage of RFRA, a number of courts had rejected claims of Quaker organizations that objected on religious grounds to obligatory participation in tax collection or other federal programs that conflicted with Quaker religious principles. *See, e.g., American Friends Serv. Comm. Corp. v. Thornburgh*, 961 F.2d 1405, 1407-08 (9th Cir. 1991); *Philadelphia Yearly Meeting*, 753 F. Supp. at 1302-03. These courts based their rulings on the *Smith* decision, which "dramatically altered the manner in which [courts] must evaluate free exercise complaints like that of AFSC." *AFSC v. Thornburgh*, 961 F.2d at 1407. However, RFRA was enacted specifically to address these types of claims, in order to ensure that burdens on the free exercise of religion occur only where the government has proven by evidence both that it has a compelling interest and that there is no less restrictive means to further that interest.

Petitioner has stipulated that the government has a compelling interest in collecting federal income taxes, Pet. App. A48, a stipulation with which *amicus* AFSC agrees. However, the government has offered no evidence (much less "demonstrate[d]") that the assessment of penalties, either on individual taxpayers such as Petitioner or on employers such as *amicus*, for failure to pay taxes or to file tax returns voluntarily is the least restrictive means of accomplishing the compelling need for tax collection.[6]

---

[6] The requirement under RFRA that the government use the least restrictive means to further its compelling interest distinguishes cases such as this one from pre-RFRA cases such as *United States v. Lee*, 455 U.S. 252 (1982). Although the Court in *Lee* held that accommodating a religious tax-objector would unduly interfere with fulfillment of the government's

Following passage of RFRA, the district court's conclusion in the case that AFSC originally pressed more than twenty-five years ago is once again true:

> We believe that the government has failed to establish that its interest in the use of the withholding method of collecting taxes is so great and compelling that it outweighs the religious interests which the plaintiffs seek to protect in this case. The additional cost of collection, if any, is a small price to pay when compared with the possible frustration of the religious practice of bearing witness to one's conscience which practice has sought the aegis of the First Amendment in the unique context of this case.
>
> . . . .
>
> Because we hold that the means of collecting plaintiffs' taxes by withholding them at the source restricts the free exercise of their religion by foreclosing a means by which they may bear witness to their opposition to the participation in war in any form which opposition is a fundamental part of their religious teaching as Quakers, the AFSC is likewise exempt from withholding [the military-related portion] of the taxes of plaintiffs . . . .

---

compelling interest in tax collection, *see id.* at 259, the Court did not consider whether there was a less restrictive means of accomplishing this goal. Moreover, Congress had already provided accommodations within the social security tax system similar to those sought by the tax-objector in *Lee*, although these did not apply to his situation. *See id.* at 256. Therefore, there was strong evidence that the system then in place was the least restrictive means of accomplishing the government's compelling interest. *See id.* at 260-61.

American Friends Serv. Comm. v. United States, 368 F. Supp. 1176, 1184-85 (E.D. Pa. 1973), *rev'd on other grounds*, 419 U.S. 7 (1974) (per curiam).

The I.R.C. penalties serve a punitive and deterrent purpose. *See Slodov*, 436 U.S. at 247. They are intended to encourage (or even to force) compliance with the voluntary tax system. *See id.* at 253-54 & n.16. Yet, imposition of the penalties on Petitioner or on AFSC cannot accomplish the IRS's goal of encouraging voluntary compliance. As a matter of faith, there can be no voluntary compliance. Instead, the penalties simply punish Petitioner and similarly-situated objectors for following the dictates of their fundamental religious beliefs. On the other hand, less restrictive means clearly exist, including the creation of a system for payment of taxes that comports with the objector's religious beliefs, *see, e.g.*, Religious Freedom Peace Tax Fund Act, H.R. 2660, 105th Cong. (1998), or collection of taxes from the objector through a levy on a non-objecting third party creditor (such as a bank), without the imposition of punitive penalties.

For over three centuries, Quakers have advocated for peace through, *inter alia*, the refusal to pay taxes in support of war or war preparations. For more than 35 years, AFSC has struggled with the difficulty of adhering to the tax laws of the United States while supporting its employees' deeply-felt religious need to witness for peace, and to refrain from supporting military force, through partial noncompliance with the federal tax laws. Punishing Quakers who follow in the footsteps of their predecessors, or penalizing the AFSC for attempting to fulfill its mission of advocating for peace does not serve any compelling interest of the government. Nor did

Respondent show at trial that a total refusal to accommodate objectors is the least restrictive means of accomplishing the government's legitimate goal of tax collection. Therefore, use of these penalties under the present circumstances violates RFRA's command that the federal government not substantially burden an individual's exercise of religion unless the government demonstrates that there is no less restrictive means of accomplishing a compelling governmental interest.

To correct the lower courts' failure to enforce RFRA according to its terms, the petition of Priscilla Lippincott Adams for a writ of *certiorari* should be granted.

CONCLUSION

For the foregoing reasons, *amicus curiae* American Friends Service Committee respectfully requests that this Court grant the petition of Priscilla Lippincott Adams for a writ of *certiorari*, and reverse the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

ARLIN M. ADAMS*
*Counsel of Record
NANCY WINKELMAN
BRUCE P. MERENSTEIN
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2000
Attorneys for Amicus Curiae American Friends Service Committee

Dated: November 19, 1999.

Supreme Court, U.S.
FILED
DEC 17 1999
CLERK

(3)

No. 99-798

In the Supreme Court of the United States

PRISCILLA M. LIPPINCOTT ADAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record

LORETTA C. ARGRETT
Assistant Attorney General

GILBERT S. ROTHENBERG
MICHELLE B. O'CONNOR
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

8 pp

QUESTION PRESENTED

Whether the imposition of federal income taxes, penalties and interest on petitioner violates the Free Exercise Clause of the First Amendment to the United States Constitution or the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	4
Conclusion	5

TABLE OF AUTHORITIES

Cases:

Babcock v. *Commissioner*, 51 T.C.M. (CCH) 931 (1986) 4

Employment Div., Dep't of Human Resources v. *Smith*, 494 U.S. 872 (1990) 3

Statutes:

Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.* 3

Internal Revenue Code (26 U.S.C.):

§ 6651(a) 3

§ 6654(a) 3

In the Supreme Court of the United States

No. 99-798

PRISCILLA M. LIPPINCOTT ADAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A22) is reported at 170 F.3d 173. The opinion of the United States Tax Court (Pet. App. A23-A27) is reported at 110 T.C. 137.

JURISDICTION

The judgment of the court of appeals was entered on March 4, 1999. The petition for rehearing was denied on June 10, 1999 (Pet. App. A53). On August 27, 1999, Justice Souter granted an extension of time in which to file a petition for certiorari to and including November 7, 1999. The petition for a writ of certiorari was filed on November 8, 1999 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(l).

STATEMENT

1. Petitioner is a member of the Religious Society of Friends, commonly known as the Quakers, who sincerely believes that participation in war is contrary to God's will (Pet. App. A33-A34). Petitioner also believes that the voluntary payment of taxes—one made without the compulsion of a levy or court order—is against the will of God to the extent that such taxes are used to fund participation in war by others (*id.* at A34).

Beginning in 1985, petitioner was employed by the Philadelphia Yearly Meeting of the Society of Religious Friends (PYM), a Quaker organization. For the years 1985 through 1989, petitioner claimed on her federal withholding forms that she was exempt from taxation. As the result, no federal income tax was withheld from her salary. On April 20, 1989, the Internal Revenue Service directed PYM to withhold federal income taxes from petitioner's salary as if she were married and entitled to one withholding allowance (Pet. App. A34-A35). PYM partially complied with that directive (*id.* at 35). Under PYM policy, however, employees who are religiously opposed to paying taxes that support the military may elect to have PYM set aside (and not pay to the government) a portion of the federal income taxes withheld from the employee's pay equal to the percentage of the federal budget allocated to defense spending (*ibid.*). The portion of withheld taxes not paid over to the government was deposited by PYM into a trust account at petitioner's request (*id.* at A35-A36).

Petitioner has stated that she elected not to pay her federal income taxes in full for the years 1988, 1989, 1992, 1993, and 1994 because "her deeply held religious beliefs precluded her [from doing so]" (Pet. App. A33, A36-A38). Petitioner further stated that she did not

timely file federal income tax returns for any of those years because she believed that it would violate her religious beliefs to provide the government with information that would assist it in collecting her taxes (*id.* at A37).

2. In 1996, the Commissioner of Internal Revenue issued notices of deficiency to petitioner for her federal income taxes for the years 1988, 1989, 1992, 1993, and 1994. The Commissioner also determined that additions to tax were required (i) under Section 6651(a) of the Internal Revenue Code, 26 U.S.C. 6651(a), for petitioner's failure to timely file federal income tax returns and (ii) under Section 6654(a) of the Internal Revenue Code, 26 U.S.C. 6654(a), for petitioner's failure to make required payments of estimated taxes (Pet. App. A29-A32).

3. Petitioner challenged the Commissioner's determinations in Tax Court. That court, however, rejected petitioner's claims and entered decision in favor of the Commissioner. The court first rejected petitioner's reliance upon the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.* (RFRA). The court noted that RFRA restored the compelling interest test applied prior to the decision in *Employment Division, Department of Human Resources* v. *Smith*, 494 U.S. 872 (1990), and that, prior to *Smith*, "the Supreme Court repeatedly held that neutral, generally applicable tax laws meet the compelling interest test" (Pet. App. A25-A26). In rejecting petitioner's claim that the government was required to accommodate her religious-based opposition to war, the court explained that (*id.* at A26 (citations omited)):

> [T]he Supreme Court has established that uniform, mandatory participation in the Federal income tax system, irrespective of religious belief, is a compelling governmental interest. As a result, requiring [taxpayer's] participation in the Federal income tax system is the only, and thus the least restrictive, means of furthering the Government's interest.

The court therefore concluded that petitioner was liable for the income tax deficiencies asserted in the notices of deficiency (*ibid.*). For the same reasons, and in reliance upon its prior decision in *Babcock* v. *Commissioner*, 51 T.C.M. (CCH) 931 (1986), the court also sustained the additions to tax imposed under Sections 6651(a)(1) and 6654(a) for petitioner's willful failure to comply with the filing and estimated tax requirements of the Internal Revenue Code (Pet. App. A26-A27).

4. The court of appeals affirmed (Pet. App. A1-A22). The court concluded that neither RFRA nor the Constitution bars imposition of the taxes and additions to tax in this case because "[t]he least restrictive means of furthering a compelling interest in the collection of taxes * * * is[,] in fact, to implement that system in a uniform, mandatory way, with Congress determining in the first instance if exemptions are to [be] built into the legislative scheme" (*id.* at A14).

ARGUMENT

This case presents the same questions currently pending on petition for writ of certiorari in *Browne* v. *United States*, No. 99- 632. For the reasons detailed in our brief in opposition in *Browne*, the petition for a writ

of certiorari should be denied both in *Browne* and in this case.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

LORETTA C. ARGRETT
Assistant Attorney General

GILBERT S. ROTHENBERG
MICHELLE B. O'CONNOR
Attorneys

DECEMBER 1999

---

* We are providing herewith to petitioner a copy of the government's brief in opposition to the petition in *Browne*.

Supreme Court, U.S.
FILED
DEC 30 1999
CLERK

(4)

No. 99-798

In The

Supreme Court of the United States

PRISCILLA M. LIPPINCOTT ADAMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

PETER GOLDBERGER
Counsel of Record
JAMES H. FELDMAN, JR.
50 Rittenhouse Place
Ardmore, PA 19003-2276
(610) 649-8200

JOHN W. WHITEHEAD
STEVEN H. ADEN
The Rutherford Institute
P.O. Box 7482
Charlottesville, VA
22906-7482
(804) 978-3888

THOMAS STEPHEN NEUBERGER
Affiliated Attorney with the Rutherford Institute
THOMAS S. NEUBERGER, P.A.
200 West Ninth St., Suite 702
Wilmington, DE 19801
(302) 655-0582
Attorneys for Petitioner

December 1999

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

11 pp

TABLE OF CONTENTS

Page

Table of Authorities ii

Argument in Reply 1

Conclusion 8

TABLE OF AUTHORITIES

Page

CASES

Employment Division v. Smith, 494 U.S. 872 (1990) .. 5, 6, 7

Hernandez v. Commissioner, 490 U.S. 680 (1989)..... 6

Nelson v. United States, 796 F.2d 164 (6th Cir. 1986) 6

Sherbert v. Verner, 374 U.S. 398 (1963) 6, 7

United States v. Bauer, 84 F.3d 1549 (9th Cir. 1996) 7

United States v. Lee, 455 U.S. 252 (1982) 6

Wisconsin v. Yoder, 406 U.S. 205 (1972)..... 7

CONSTITUTION, STATUTES AND RULES

U.S. Const., amend. I (Free Exercise Cl.) ..... *passim*

26 U.S.C. § 6702..... 6

42 U.S.C. § 2000bb(b)(1) 7

42 U.S.C. § 2000bb-2(3) 7

Religious Freedom Restoration Act..... *passim*

IRM 1218 (Policies of the Internal Revenue Service Handbook), Policy Statement P-2-7..... 5

ARGUMENT IN REPLY

PRISCILLA M. LIPPINCOTT ADAMS has petitioned this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit denying her appeal from decisions of the United States Tax Court. The decisions below upheld a deficiency in income taxes, in addition to certain penalties, resulting from petitioner's exercise of her Quaker religious convictions against voluntarily paying for military activities and war preparation. In support of her petition, she gave two reasons why certiorari should be granted: (1) to enforce the language of the Religious Freedom Restoration Act and uphold the Congressional policy that federal government agencies must meet a statutory burden of proof under the "least restrictive means" test before unnecessarily burdening the exercise of sincere religious beliefs, and (2) to correct the lower courts' departure from this Court's settled precedent under the Free Exercise Clause.

Rather than address the reasons presented by the petitioner, the respondent claims that "[t]his case presents the same questions currently pending on petition for writ of certiorari in *Browne v. United States*, No. 99-632," Brief in Opposition ("BO") at 4, and then argues that the writ of certiorari should be denied "[f]or the reasons detailed in our brief in opposition in *Browne*. . . ." *Id.* But the instant case does not present both issues raised in that case. While the petitioners in *Browne* and the petitioner in this case have argued that the Internal Revenue Service's failure to abate various penalties violates both the Religious Freedom Restoration Act, 42 U.S.C.

§ 2000bb *et seq.* ("RFRA") as well as the First Amendment's Free Exercise Clause, the reasons that each petitioner gave for why a writ of certiorari should be granted, as well as factual and procedural differences in the cases, render much of the respondent's opposition in *Browne* inapplicable to this case. Moreover, the *Browne* petition does not advance all the same arguments for granting certiorari that are made in Ms. Adams' petition.

Apparently to enhance its position that the two cases can be addressed together, the respondent also restates the Questions Presented in the two cases in identical terms. The Questions stated in Ms. Adams' petition, however, are a carefully and accurately framed presentation of the issues that this Court might want to address in the case. The respondent's counterstatement is not only inapposite, but also entirely obscures the legal points presented. Significantly, Ms. Adams' petition does not challenge either "the imposition of federal income taxes" or of "interest." BO i. Her petition quite clearly and specifically *only* challenges the imposition of certain civil penalties, and not the tax system itself. For these reasons, the respondent's Brief in Opposition misses the mark.

In *Browne*, the respondent argues that the "decision of the court of appeals [in that case] is correct and does not conflict with any decision of this Court or any other court of appeals." *Browne* BO 5; see also *id.* 11-12 (discussing conflict claim made in *Browne* petition). Unlike the petitioners in *Browne*, however, the petitioner in this case has made no claim that the decision of the court of appeals in this case conflicts with the decision of any

other court of appeals.[1] While petitioner Adams has argued that the court of appeals' decision in her own case is incorrect and contrary to the decisions of this Court, her reasoning differed substantially from that of the petitioners in *Browne*, and the two appellate decisions have almost nothing in common (except that the Second Circuit's *Browne* decision cites and relies, in part, on the Third Circuit's opinion in petitioner Adams' case).

The respondent also argues in opposition to the *Browne* petition that the petitioners in that case "failed to establish reasonable cause for their failure to timely pay their taxes [because] [t]their complaint did not allege that they exercised ordinary business care, that they were unable to pay their taxes, or that undue financial hardship would result from timely paying the taxes in question." *Browne* BO 6. This argument is inapplicable to petitioner Adams' case for two reasons. First, petitioner Adams' case was decided after a trial on stipulated facts – not on the pleadings, as in *Browne*. Second, it is irrelevant in this case whether "undue financial hardship would result from timely paying the taxes in question," because the Internal Revenue Service did not assert late payment penalties in this case – even though the respondent inexplicably claims that such a penalty is "mandatory." *Browne* BO 5.

---

[1] In addition, unlike the petitioners in *Browne*, the petitioner in this case advanced no claim either for interest abatement or for injunctive or declaratory relief. The respondent's argument in *Browne* that the district court had no jurisdiction over such claims, *Browne* BO 3 nn. 1 & 2, is therefore wholly inapplicable to the instant petitioner.

The respondent argues in *Browne* that the determination of the petitioners in that case not to pay federal income taxes did not have a "reasonable cause," because a "decision not to pay taxes that is based on a religious or other belief is not '[a] factor[ ] beyond the taxpayer's power to control.' " *Browne* BO 7 (bracketed insertions as in original). This argument is not persuasive – even with respect to penalties for failure to file tax returns or to pay estimated tax installments (which are at issue here). While factors which are not beyond a taxpayer's power to control may not constitute "reasonable cause" for a failure to file returns, the respondent's refusal to acknowledge how religious beliefs involve forces beyond the control or understanding of human beings is unsupported by case law, evidence, human experience, or logic. *Browne* BO at 7; see also cases cited and discussion in Ms. Adams' Petition, at 26 n.19; Amicus Brief of American Friends Service Comm., at 10 & n.5 (citing theological sources). Moreover, in the Tax Court in this case, the petitioner's unrebutted and unchallenged testimony, as stipulated by respondent and found to be fact by the Tax Court, was that her beliefs actually "precluded" her from filing on time. App. A38 (Stip. ¶ 46).

Next, the respondent argues in *Browne* that "the Free Exercise Clause does *not* require the United States to grant an exemption for religious hardship when, as here, waivers are granted on the basis of facially neutral, uniformly applicable standards that do not take into account religious or other beliefs." *Browne* BO 7 (emphasis original). For the reasons presented in the petition in this case, however, Congress' decision to grant exemptions to the failure to file penalty for "reasonable cause," App. A55,

and to the failure to pay estimated tax penalty for "unusual circumstances" which render its imposition "against equity and good conscience," App. A56, are precisely the individualized type of exemptions which this Court in *Employment Division v. Smith*, 494 U.S. 872 (1990), said may not exclude "religious hardship" without "compelling reason." *Id.* at 884. See Pet. 23-26.

Although the respondent's attorneys claim that exemptions are available "only upon the occurrence of specific circumstances beyond the individual's control," *Browne* BO 8, the respondent's own longstanding Policy Statement contradicts that claim. The Internal Revenue Manual provides that:

> Any sound reason advanced by the taxpayer as the cause for delay in filing a return . . . will be carefully analyzed to determine whether the applicable penalty should be asserted.

IRM 1218, IRS Policy P-2-7 (App. A57). The respondent's attorneys make no attempt to reconcile the respondent's own published policy and interpretation of the statute with their unsupported contrary assertion. The Policy Statement goes on, for instance, to list as "examples of sound causes" a "death or serious illness" in the taxpayer's immediate family. *Id.* The taxpayer's *own* death or illness might make compliance impossible, but a taxpayer's attention to a *relative's* death or illness only reflects a matter of making a pressing but voluntary decision among priorities. The respondent's claim that religious exercise involves only free choice and that voluntary choices never constitute "reasonable cause" is belied by examples such as this. The respondent's argument would simply justify the kind of discriminatory

exclusion of religious reasons that RFRA and the Free Exercise Clause prohibit.

Finally, the respondent argues in *Browne* that because pre-*Smith* cases uniformly rejected Free Exercise claims in tax cases, that the court of appeals was correct to reject the petitioner's RFRA claim. *Browne* BO 9-10. While the legislative history of RFRA suggests that courts may sometimes look to pre-*Smith* precedent for guidance, the respondent's reference to cases which fail to follow the procedures and standards mandated by RFRA can provide no guidance at all. See *Browne* BO 10-11.[2]

As this Court acknowledged in *Smith*, such decisions as *United States v. Lee*, 455 U.S. 252 (1982), only "purported" to apply the *Sherbert* test. 494 U.S. at 883.[3] If

---

[2] The respondent claims, in particular, that these cases demonstrate a settled body of precedent rejecting Free Exercise challenges to the imposition of tax penalties. *Browne* BO 11. In fact, none of these cases raised any of the issues presented by our petition. Only one (*Nelson v. United States*, 796 F.2d 164 (6th Cir. 1986), mis-cited by the respondent) even discusses the statutory basis for abatement of penalties. And *Nelson* is a "frivolous return" case under 26 U.S.C. § 6702, which does not have a "reasonable cause" or "exceptional circumstances" exemption.

[3] The other cases cited by the respondent fare no better. *Hernandez v. Commissioner*, 490 U.S. 680, 699-700 (1989), provides no guidance in RFRA cases, because it also did not require the government to *demonstrate* with evidence the truth of its assertion that the tax system could not survive recognition of religious exceptions. None of the pre-*Smith* cases cited by respondent as approving the imposition of penalties for failing to comply with the tax laws for religious reasons even "purports" to apply a *Sherbert*-type analysis to a claimed exemption from penalties imposed for failure to file or pay taxes (including estimated taxes). *Browne* BO 11.

courts are permitted under RFRA to follow decisions which only "purport" to apply the *Sherbert* test, but which in fact do not, then only lip-service will be paid to the accommodations to free religious exercise which Congress has mandated. Only pre-*Smith* cases which apply *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) – the cases specifically referenced in 42 U.S.C. § 2000bb(b)(1) – according to their terms and their spirit can properly provide guidance in decisions under RFRA. Moreover, RFRA assigns a specific burden of proof by "evidence," *id.* § 2000bb-2(3) – an enhancement to the *Sherbert* test, as Judge Noonan has pointed out. See *United States v. Bauer*, 84 F.3d 1549, 1558 (9th Cir. 1996); Amicus Brief for Philadelphia Yearly Meeting of Religious Society of Friends, at 14-15. By relying exclusively on the *Browne* opposition, the respondent ignores the failure of the IRS to offer any evidence at trial in this case to support its purely rhetorical contention that no accommodation is feasible.

This Court should grant certiorari to enforce the application of RFRA to all federal agencies, including the Internal Revenue Service, according to its terms, as well as to contrast that strong statutory rule with the narrower, post-*Smith* equal-consideration Free Exercise test, based on *Sherbert*.

CONCLUSION

For the foregoing reasons, and for the reasons discussed more fully in the Petition, PRISCILLA M. LIPPINCOTT ADAMS prays that this Court grant her petition for a writ of certiorari, and reverse the judgment below.

Respectfully submitted,

PETER GOLDBERGER
Counsel of Record
JAMES H. FELDMAN, JR.
50 Rittenhouse Place
Ardmore, PA 19003-2276
(610) 649-8200

JOHN W. WHITEHEAD
STEVEN H. ADEN
The Rutherford Institute
P.O. Box 7482
Charlottesville, VA
22906-7482
(804) 978-3888

THOMAS STEPHEN NEUBERGER
Affiliated Attorney with the Rutherford Institute
THOMAS S. NEUBERGER, P.A.
200 West Ninth St., Suite 702
Wilmington, DE 19801
(302) 655-0582

Attorneys for Petitioner

December 29, 1999

(5)

DEC 23 1999

No. 99-798

In The

Supreme Court of the United States

PRISCILLA M. LIPPINCOTT ADAMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeal For The Third Circuit

BRIEF OF AMICUS CURIAE PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS IN SUPPORT OF PETITIONER PRISCILLA M. LIPPINCOTT ADAMS

RICHARD L. BAZELON*
BAZELON LESS & FELDMAN, P.C.
1515 Market Street – Suite 700
Philadelphia, PA 19102-1907
(215) 568-1155

Attorneys for Amicus Curiae Philadelphia Yearly Meeting of the Religious Society of Friends

**Counsel of Record*

December 23, 1999

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

INTEREST OF AMICUS CURIAE 1

A. Interest as a Religious Organization of Which Petitioner Is a Member 1

B. Interest as an Employer 8

ARGUMENT 11

A. The Importance of the Issue Presented by the Petition for Writ of Certiorari 11

B. The Holding by the United States Court of Appeals for the Third Circuit Is Inconsistent With the Religious Freedom Restoration Act 14

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES:

American Friends Service Committee v. United States, 368 F. Supp. 1176 (E.D. Pa. 1973), *rev'd on procedural grounds*, 419 U.S. 7 (1974) 10

City of Boerne v. Flores, 521 U.S. 507 (1997) 4, 14, 15

Employment Division v. Smith, 494 U.S. 872 (1990) 9, 14

Sherbert v. Verner, 374 U.S. 398 (1963) 14

United States v. Philadelphia Yearly Meeting of the Religious Society of Friends, 753 F. Supp. 1300 (E.D. Pa. 1990) 9

United States v. Bauer, 84 F.3d 1549 (9th Cir. 1996) 15

United States v. Packard, 1999 WL 500797 (2d Cir. June 1, 1999) 13

STATUTES AND REGULATIONS:

28 U.S.C. § 6332(d)(2)..... 10

42 U.S.C. § 2000bb-2(3) 15

42 U.S.C. § 2000bb-1..... 15

H.R. 1454, 106th Cong., 1st Sess..... 15

MISCELLANEOUS AUTHORITIES:

Peter Brock, *The Quaker Peace Testimony, 1660 to 1914* (1979)..... 3

Bernd G. Janzen, *Communities of Conscience: Collected Statements on Conscience and Taxes for Military Preparations* (Peace Tax Foundation 2d ed.) 14

TABLE OF AUTHORITIES – Continued

Page

Declaration "Against All Plotters and Fighters in the World," addressed to Charles II by George Fox, Richard Huberthorne and ten other Friends (Jan. 21, 1661) 3

Letter from President Washington to Philadelphia Yearly Meeting of the Religious Society of Friends (rec'd 1790) 4

Philadelphia Yearly Meeting, *Faith and Practice* (1997) 7

Minutes of PYM (1776) 5

Minutes of PYM Representative Meeting (Apr. 24, 1975) 9

P.Y.M. Staff Manual, (1986 ed.) 8

The Charter of Privileges Granted by William Penn, Esq. to the Inhabitants of Pennsylvania and Territories, Accepted by Order of the Assembly 2

INTEREST OF AMICUS CURIAE PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS[1]

A. Interest as a Religious Organization of Which Petitioner Is a Member

The Philadelphia Yearly Meeting of the Religious Society of Friends (hereinafter, "PYM"), established in 1681, is one of the oldest bodies of the Religious Society of Friends (also known as "Quakers") in the world. A Yearly Meeting is similar to a "synod" or "archdiocese" in certain other churches. PYM currently includes approximately 12,000 members in 104 "monthly meetings," or congregations, covering the geographic area of eastern Pennsylvania, central and southern New Jersey, Delaware and the eastern shore of Maryland. PYM employs 51 full and part-time staff. Petitioner, Priscilla M. Lippincott Adams, is a member of the Haddonfield Monthly Meeting of the Religious Society of Friends, a constituent meeting of PYM. She has also been a full-time employee of PYM since 1984. Her actions which bring her before this Court are acts of religious conscience which express not only her personal convictions but also the fundamental principles, or "testimony," of the Religious Society of Friends.

This case is about freedom to exercise religion, one of the fundamental inspirations for the founding of this

---

[1] The parties have consented to the filing of this brief. Counsel for a party has not authored this brief in whole or in part, and no person or entity, other than amicus curiae or its counsel, has made a monetary contribution to the preparation or submission of the brief.

Nation and for its subsequent strength and diversity. Indeed, the case involves the religious group which established the colony of Pennsylvania so that they, and others, could freely exercise their respective religions. *See* The Charter of Privileges Granted by William Penn, Esq. to the Inhabitants of Pennsylvania and Territories, Accepted by Order of the Assembly (Philadelphia Oct. 28, 1701). Members of the Religious Society of Friends were vitally concerned in establishing the principle of the free exercise of religion in the Bill of Rights. Pet. App. A47.

The Religious Society of Friends was founded on one distinctive and fundamental religious belief, which it has consistently propounded since its inception in 1650. This is the conviction that there is "that of God" in every human being through which divine guidance is inwardly received and the conscience enlightened. Pet. App. A34. Every human being has direct access through this "Inner Light" to divine inspiration and guidance for living in accordance with God's will. Those who discern and heed the promptings of this Inner Light in their daily lives are "saved"; that is, they come into fullness and wholeness of life and right relationship with God and one another. Those who resist, ignore, or disobey this Inner Light, even if they profess religion, are "damned"; that is, doomed to unhappiness and alienation from God, from themselves, and from one another.

Friends believe that the conscience is a vehicle for the Inner Light. To disobey the dictates of one's conscience is equivalent to disobeying God. Obedience to religiously inspired conscience, therefore, is fundamental to the faith of a practicing Friend. Conscience has a particularly sacred quality for Friends. Pet. App. A41.

Given that there is that of God in every person, Friends believe that it is wrong to harm, maim or kill another person. Pet. App. A34. The Religious Society of Friends has consistently maintained, as a matter of direct revelation, corroborated by Scripture, that all war and preparation for war are contrary to the will of God and the teachings of Jesus Christ. In 1661, Friends declared:

> We utterly deny all outward wars and strife, and fighting with outward weapons, for any end, or under any pretense whatsoever; this is our testimony to the whole world. The spirit of Christ, by which we are guided, is not changeable, so as once to command us from a thing as evil and again to move us unto it; and we do certainly know, and so testify to the world, that the spirit of Christ, which leads us into all Truth, will never move us to fight and war with outward weapons, neither for the kingdom of Christ, nor for the kingdoms of this world.

Declaration "Against All Plotters and Fighters in the World" addressed to Charles II by George Fox, Richard Hubberthorne and ten other Friends (Jan. 21, 1661) (quoted in *The Journal of George Fox* 339-400). *See also* Peter Brock, *The Quaker Peace Testimony, 1660 to 1914* at 25 (Sessions Book Trust, York, England 1979).

This fundamental tenet, or Peace Testimony, of the Religious Society of Friends was recognized and respected even before the founding of this Nation. Indeed, many Quakers, including petitioner's paternal ancestors, came to this land in pursuit of religious freedom and the right not to be conscripted. President George Washington, in exempting Friends from military

service, wrote to the Philadelphia Yearly Meeting of the Religious Society of Friends in 1790 as follows:

> Government being, among other purposes, instituted to protect the Persons and Consciences of men from oppression, it certainly is the duty of the Rulers not only to abstain from it [oppression] themselves, but according to their stations to prevent it in others. . . .
>
> Your principles & conduct are well known to me. . . . I assure you very explicitly that in my opinion the Conscientious scruples of all men should be treated with great delicacy & tenderness, and it is my wish and desire that the Laws may always be as extensively accommodated to them, as a due regard to the Protection and essential Interests of the Nation may Justify, and permit.

Letter from President Washington to Philadelphia Yearly Meeting of the Religious Society of Friends (rec'd 1790) (held in the Quaker Collection at Haverford College, Haverford, Pennsylvania) (spelling, punctuation and capitalization per original) (found at Pet. App. A39-A40). *See also City of Boerne v. Flores*, 521 U.S. 507, 662 (1997) (O'Connor, J., dissenting) (quoting same letter from secondary source).

As a direct extension and expression of this historic Peace Testimony, Friends have consistently supported the refusal as a matter of religious conscience to pay taxes for purely military purposes. The Quaker founder of Pennsylvania, William Penn, refused to send money to England for a war against the French in Canada in 1711, stating:

> No man can be true to God and false to his own conscience, nor can he extort from it a tribute

> [*i.e.*, a tax] to carry on any war, much less offensive, nor ought true Christians pay for it.

Pet. App. A43-A44. And in 1776, Philadelphia Yearly Meeting Minutes stated:

> It is the judgment of this Meeting that a tax levied for the purchase of drums, colors, or for other war-like uses cannot be paid consistently with our Christian testimonies.

Minutes of PYM (1776) (held in Friends Historical Library, Swarthmore College, Swarthmore, Pennsylvania).

This tenet of the Religious Society of Friends was expressed in the PYM Minutes in 1780 in the following way:

> . . . it [is] our unanimous sense and judgment, that a living concern for the advancement of our testimony to the peaceable kingdom of Christ, by refraining from such compliances as evidently tend to war and bloodshed, still continues to spread in many minds, and a fervent desire hath prevailed amongst us, that according to the advices given forth by this meeting at sundry times . . . respecting the payment of taxes, selling of property for the use of the armies, that the members of our religious society be again exhorted strictly to attend to the monitions of divine Grace, and carefully guard against suppressing them either in themselves or others, that so they may be preserved in a conduct consistent with our holy profession . . .

Id.; Pet. App. A44.

To be sure, the great majority of PYM's members pay federal taxes, despite their objection to war. At the same time, Friends have felt a growing burden of conscience as they have watched the increasing portion of every tax dollar going to military expenditures. Pet. App. A45. PYM has reaffirmed the principle of war tax refusal in the context of present conditions, and of this case. The 1970 session of PYM re-affirmed that "refusal to pay the military portion of taxes is an honorable testimony, fully in keeping with the history and practice of Friends." Pet. App. A46. PYM further stated:

> We gladly pay the civilian part of our taxes, but many have reached a point in their conscience which prevents or makes difficult the payment of the military portion . . . We warmly approve of people following their conscience, and openly approve civil disobedience in this matter under Divine compulsion. We ask all to consider carefully the implications of paying taxes that relate to war-making.

Id. In 1979, the Yearly Meeting went a step further, stating:

> Within the framework of respect for individual conscience, we call upon those Friends who feel ready to do so to begin now to refuse to pay taxes for military purposes. We call upon all Friends to continue to search themselves deeply on the question of their responsibility to separate themselves from preparations for war. . . . We support with spiritual, moral, legal and material aid . . . those Friends who are led to refuse payment of war taxes.

Id.

PYM supported the Friends Committee on National Legislation in their leadership role in working for Congressional passage of the Religious Freedom Restoration Act (hereinafter "RFRA") in 1993. PYM and many others in the Religious Society of Friends hoped and expected that this legislation would protect the exercise of religious conscience where such exercise could be accommodated without demonstrable harm to any compelling governmental interest.

The involvement of PYM in this case has another dimension. The Society of Friends works with a member who desires assistance in addressing a matter of conscience, in order to determine whether the member's actions or proposed actions follow a "leading" from God.[2] Friends do this through "clearness" committees. Friends generally do not recognize an individual's "concern" as a "leading" which justifies action until it has been tested and challenged in a clearness process, in which the individual receives guidance, aid and (if found to be appropriate) encouragement from other members of the meeting, serving as a clearness committee. Pet. App. A35, A40; *Faith and Practice* 29, 178-79 (1997).[3] PYM adopted a policy in 1983 that employees seek "clearness" from their own meetings for their military tax refusal

---

[2] In Quaker terminology, a "leading" is a sense of being drawn or called by God in a particular direction, or toward a particular course of action. Pet. App. A35.

[3] *Faith and Practice*, revised from time to time since the 17th century, is the corporate statement of beliefs and procedures intended to inform individuals and meetings in the conduct of their lives as Quakers. Philadelphia Yearly Meeting's most recent edition is 1997.

undertaken as an expression of Friends Peace Testimony.[4] Pet. App. A35. Petitioner in this case has convened three separate clearness committees at the Haddonfield Monthly Meeting since 1984 to help her discern God's leading with respect to her tax resistance. Pet. App. A36-A37. The consistent result of that process has been an affirmation of petitioner's sincerity and the rightness of her course of action.

PYM considers it a sacred duty to support the conscientious actions of its individual members, especially in such historic witness as the Peace Testimony.

B. Interest as an Employer

As the employer of petitioner Adams and some 50 others, PYM has addressed the need for an administrative policy regarding war tax refusal. The issue has arisen in connection with (1) IRS levies on salaries and (2) paying withheld taxes to the IRS. In both contexts, PYM is placed under government compulsion to cooperate in the collection of taxes from an employee who refuses as a matter of religious conscience to pay the portion of his/her taxes which are used for military purposes.

---

[4] The 1983 policy statement of the Philadelphia Yearly Meeting of the Religious Society of Friends also provided that "taxes not paid should be re-directed to an alternative or escrow fund, or to a recognized charitable cause." *P.Y.M. Staff Manual*, War Taxes, IRS Levies and Liens, § H, ¶ 3, p. III-4 (1986 ed.). Petitioner Adams has set aside any amounts due for taxes which have not been paid or withheld, and loans these amounts at no interest to organizations which she believes are working to create a better world. Pet. App. A36.

In 1975, PYM adopted the following policy regarding IRS levies on the salaries of its employees who were military tax refusers:

> Philadelphia Yearly Meeting should refuse to honor a levy or to pay over the money voluntarily, setting forth our belief that it is wrong to force an employee to violate his/her conscience.

Minutes of PYM Representative Meeting (Apr. 24, 1975) (held in Archives, Friends Historical Library, Swarthmore College, Swarthmore, Pennsylvania).

PYM followed this policy in 1985 and 1986 when it declined to honor IRS notices of levy on the salary of two of its employees who were war tax refusers. The litigation which followed predated the Religious Freedom Restoration Act. In *United States v. Philadelphia Yearly Meeting of the Religious Society of Friends*, 753 F. Supp. 1300 (E.D. Pa. 1990), the Court held that under *Employment Division v. Smith*, 494 U.S. 872 (1990), announced during the pendency of the PYM case, the law for IRS levies passed constitutional muster, even as applied to violate the core religious principles of an established church, because it was a "neutral, generally applicable regulatory law." 753 F. Supp. at 1300.[5] The Court disallowed the 50 percent

---

[5] Even so, the United States District Judge commented as follows:

> It is ironic that here in Pennsylvania, the woods to which Penn and the Religious Society of Friends came to enjoy the blessings of religious liberty, neither the Constitution nor the Bill of Rights protect the policy of that Society not to coerce or violate the consciences of its employees and members with respect to their

penalty, which the IRS sought under IRC § 6332 (d)(2), on the basis that PYM had "reasonable cause" not to comply with the levy because it reasonably believed that it would prevail in its legal challenge to the levy. 753 F. Supp. at 1305. Had the Religious Freedom Restoration Act then been in effect, and had its standards been properly applied, the outcome of this case against PYM might have been quite different. *See American Friends Service Committee v. United States,* 368 F. Supp. 1176 (E.D. Pa. 1973), *rev'd on procedural grounds,* 419 U.S. 7 (1974) (per curiam).

In 1988, PYM formally addressed the issues raised by its role as an employer in withholding compensation for tax purposes from employees who refused as a matter of conscience to pay taxes for military purposes. Pet. App. A47. The written policy adopted by PYM affirms the commitment of PYM not to act in a manner which would violate the conscience of an employee expressing this historic testimony of the Religious Society of Friends, and carefully articulates the conditions under which PYM will not forward withheld taxes to the IRS. The policy requires that the employee have received "clearness" for military tax refusal, and provides for full withholding and reporting to the IRS concerning employee compensation and withholding. The IRS is informed that the portion of the amount withheld from the employee and not remitted to the IRS has been credited to a special purpose fund and invested on a short term basis, with interest being added to the withheld amount. The IRS is further informed that

---

religious principles, or to act as an agent for our government in so doing.

753 F. Supp. at 1306.

the unremitted withholding, plus interest, will be paid over to the IRS on behalf of the employee at such time as there is assurance that the taxes will not be used for military purposes. The unremitted withholding is limited to the percentage of taxes used for military purposes, as determined by PYM. The effect of the implementation of this policy is that the IRS has imposed interest and penalties on the unremitted withheld taxes (and on one occasion on the entire amount of taxes withheld for all PYM employees); has levied on a bank account of PYM for the taxes, interest and penalties; and has sometimes imposed additional penalties in connection with the levy.

ARGUMENT

A. The Importance of the Issue Presented by the Petition for Writ of Certiorari

The free exercise of religion is one of the cherished liberties guaranteed to the people by the Bill of Rights. RFRA affirmed and expanded this fundamental liberty by requiring that any substantial governmental burden on the free exercise of religion be imposed only by the "least restrictive means." Yet, according to the United States Court of Appeals for the Third Circuit, neither in assessing taxes nor in collecting taxes does the IRS have any obligation even to consider accommodating deeply held religious convictions of Friends against war, despite the plain language of RFRA's broad provisions.

The accommodation sought by petitioner in this case, and sought by PYM in its role as an employer of this and other taxpayers who express the Society of Friends' Peace

Testimony, is relief from use of their tax dollars for war purposes or, at the least, relief from fines or penalties when their accounts are levied in lieu of "voluntary" payment of military taxes. This modest accommodation does not involve non-collection of any tax, nor an impact on the Congressional budget or on Congress' appropriation of tax dollars.

This issue is of overriding importance to PYM and its 12,000 members. Over the past thirty-plus years, more than three hundred members of PYM have refused to pay some portion of their federal taxes. In so doing, they were and are acting not only for themselves, but they also were and are expressing the 340-year-old Peace Testimony of the Religious Society of Friends. Thus, the refusal by the IRS to consider accommodation in this case affects all members of PYM, and the Society of Friends itself, by substantially penalizing an exercise of religious conscience and deeply held religious conviction.

Today, many Friends recognize that the nature of modern warfare as supported by the U.S. Government is less a matter of manpower and more a matter of resources to fund the high technologies now utilized. Accordingly, in the years since World War II, war tax refusal has been continuously before PYM either in annual session or in the periodic administrative gatherings formerly known as Representative and now Interim Meeting. PYM has repeatedly taken formal action to support war tax refusal acts of conscience. PYM has also acted to create means of support. In 1978 PYM reestablished the historic Fund For Sufferings, allocating money from the PYM budget for legal and material assistance to those who witness in conscience for the Peace

Testimony.[6] In 1980, PYM created the War Tax Concerns Support Committee, composed of member volunteers to offer guidance to members considering war tax resistance. PYM continues to assign paid staff to this committee and to bear the direct costs associated with corporate support of Petitioner's witness.

The importance of these religious matters is not limited to PYM. Many members of the Religious Society of Friends, wherever they reside, are similarly affected. This is demonstrated by the respective Petitions for Writ of Certiorari to the United States Court of Appeals for the Second Circuit in *Browne v. United States*, No. 99-632, where the Quaker taxpayers reside in Vermont, within New England Yearly Meeting, and *United States v. Packard*, 1999 WL 500797 (2d Cir. June 1, 1999), *rehearing denied*, ___ F.3d ___ (Nov. 19, 1999), where the Quaker taxpayer resides in Connecticut, within New York Yearly Meeting. Both of these cases involve members of the Religious Society of Friends who have refused, as a matter of conscience, to pay some or all of their taxes, yet were refused accommodation in the matter of penalties. Many Mennonites and Church of the Brethren adherents participate in the same witness, as do individuals of much larger Christian and non-Christian denominations. Many national religious organizations have recognized that conscientious objection to the payment of federal taxes for military preparation should be accommodated

---

[6] From the mid-1600's in England, the Religious Society of Friends established Funds For Sufferings for relief of Friends and their families who experienced religious persecution.

by government. *See* Bernd G. Janzen, *Communities of Conscience: Collected Statements on Conscience and Taxes for Military Preparations* (Peace Tax Foundation 2d ed.).

B. The Holding by the United States Court of Appeals for the Third Circuit Is Inconsistent With the Religious Freedom Restoration Act

The petitioner in this case, and the petitioners in the two similar cases in the Second Circuit, have been accorded no accommodation whatsoever, or even consideration of accommodation, by the IRS, either in the use of their tax dollars or in the imposition of penalties. Despite recognition by the government and the lower courts that these taxpayers acted on the basis of deeply held religious convictions, they have been treated as though they were negligent or otherwise acting without any reasonable basis.[7]

The Opinion of the United States Court of Appeals for the Third Circuit in this case contradicts the plain language of the Religious Freedom Restoration Act. RFRA, as its name confirms, was intended to supersede *Employment Division v. Smith*, 494 U.S. 872 (1990). *See City*

---

[7] In her Petition for Writ of Certiorari, petitioner contends that her deeply held religious views were not given the consideration which the Internal Revenue Service gives to other individual circumstances. See Petition for Writ of Certiorari, pages 20-28. She argues that the failure to give equal consideration to her religious obligations violated *Sherbert v. Verner*, 374 U.S. 398 (1963), as explained in *Employment Division v. Smith*, 494 U.S. at 884. PYM supports this ground for reversal, as well as the ground for reversal based upon the Religious Freedom Restoration Act.

of Boerne v. Flores, 521 U.S. 507 (1997). The statute, by its terms, requires that the government *demonstrate* that the burden which it has placed on the exercise of religion "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1. " '[D]emonstrates' means meets the burden of going forward with the *evidence* and of persuasion." *Id.* § 2000bb-2(3) (emphasis added). *See United States v. Bauer*, 84 F. 3d 1549, 1558 (9th Cir. 1996) (Noonan, J.). In this case, the respondent presented no evidence whatsoever on the issue of least restrictive means and thus patently failed to meet its burden of proof at trial.

Although it was not petitioner's burden to present evidence concerning less restrictive alternatives, there were clearly such alternatives to be considered. Relatively minor accommodations to taxpayers' deeply held religious convictions would promote full reporting and prompt payment or collection. Petitioner has consistently reminded amicus PYM that she would willingly pay all taxes if given appropriate assurance that her payments would not be used for military or other war related purposes. This would not affect the overall allocations of tax dollars in accordance with the budget approved by Congress.[8]

---

[8] Proposed legislation to establish a Religious Freedom Peace Tax Fund illustrates one means for making this accommodation. H.R. 1454, 106th Congress, 1st Session, provides for a separate account to be established by the Secretary of the Treasury for a taxpayer who certifies in writing to the Secretary that he/she is "opposed to participation in war in any form based upon the taxpayer's deeply held moral, ethical, or religious beliefs or training (within the meaning of

Petitioner could also have been accommodated in the collection process. Imposition of penalties is a harsh and ineffective sanction for persons exercising fundamental religious convictions. Where the account(s) of the taxpayer, and his/her employer, have been identified to the IRS, and full reporting of income and timely withholding of wages have taken place, penalties are punitive only. They do not enhance compliance. Nor has petitioner benefitted financially; she has taken actions to ensure that she not derive any material or pecuniary benefit from her refusal to pay war taxes. Under RFRA, accommodation to petitioner in the imposition and collection of taxes should have been explored. Without demonstration, by evidence from the IRS, it certainly cannot be said that arrangements protecting the Government's interest and at the same time accommodating petitioner's religious convictions could not have been made.

CONCLUSION

This case is central to the ability of Friends to live fully in the light of God's will, which both the First Amendment and RFRA were intended to facilitate. Congress has reaffirmed and amplified the founding principle of free exercise of religion in RFRA. It is for this Court to require that the statute be implemented in accordance

---

the Military Selective Service Act,. . . . " Tax dollars deposited in this account would not be used for war purposes, as defined in the bill.

with its terms. The petition for certiorari should accordingly be granted, and the judgment of the Court of Appeals reversed.

Respectfully submitted,

RICHARD L. BAZELON, Esquire
BAZELON LESS & FELDMAN, P.C.
1515 Market Street, 7th Street
Philadelphia, PA 19102

Attorney for Amicus Curiae
Philadelphia Yearly Meeting

December 23, 1999